

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

* * * * *

J. J. Powell, Inc.

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Plaintiff

*

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v.

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NO. 1:13-cv-00353-LJB

Judge Lynn J. Bush

UNITED STATES OF AMERICA

*

*

Defendant

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PLAINTIFF'S RESPONSE TO
DEFENDANT'S INTERROGATORIES – SET NO. 1

1. J. J. Powell, Inc. is a petroleum distributor based in central Pennsylvania. Powell delivers gasoline and diesel fuel to customers in a variety of ways including large truck delivery, small truck delivery, and retail fueling islands. Most of the tax exempt transactions occur at fueling islands where there customer possesses a card issued by Powell. The customer turns on the fuel pump with the card and dispenses fuel into the vehicle. Most of the exempt customers are small municipalities, townships, and boroughs who have been long time customers of Powell. A list of exempt customers is included in the production of documents. People with knowledge of these facts include Keith Powell, Jeff Powell, Bob Hummel, Doug Goss, and Kathy Herman. They may be reached at the offices of J.J. Powell, Inc., 109 W. Presqueisle St., Philipsburg, PA 16866, phone 814-342-3190.

2. Prices are determined by the market. A tax exempt customer's price for gasoline would be similar to a non exempt customer purchasing in a similar manner. The difference in the total amount of the invoice is the tax exempt customer doesn't pay the taxes from which they are exempt.

Defendant
Exhibit

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3. Prices are determined by the market. A tax exempt customer's price for diesel would similar to a non exempt customer purchasing in a similar manner. The difference in the total amount of the invoice is the tax exempt customer doesn't pay the taxes from which they are exempt.

4. Powell is invoiced by suppliers for all taxes at the time of purchase. These facts are evidenced by invoices from suppliers in the production of documents. People with knowledge of these facts include Keith Powell, Bob Hummel, and Doug Goss.

5. Powell is invoiced by suppliers for all taxes at the time of purchase. Powell then does not charge exempt customers the tax from which they are exempt. These facts are evidenced by invoices from suppliers and the exempt sales customer invoices from Powell in the production of documents. People with knowledge of these facts include Keith Powell, Bob Hummel, and Doug Goss.

6. The facts are set forth in Powell's claim for refund. Powell paid taxes when none were due and the IRS is withholding refunds that are due to Powell.

7. For any credit or refund claimed by Powell the exempt customer provided an exemption certificate to Powell. All exemption certificates are provided in the production of documents. People with knowledge of these facts include Keith Powell, Bob Hummel, and Doug Goss.

8. Powell has refunded no excise tax in connection with the sale of gasoline or diesel fuel to exempt customers during the periods in question.

9. Powell does not have audit authority and therefore has no knowledge of claims filed with the IRS by exempt customers. However, since none of the exempt customers were charged and/or paid any excise tax they would have no basis to file a refund claim.

10. The exemption certificates were produced and the applicable Treasury Regulations were cited in Powell's Complaint. The exemption certificates speak for themselves.

11. The Plaintiff has not determined which exhibits it will introduce at the trial but it may introduce any or all of the documents produced in response to Defendant's request. They will be introduced for the purpose of showing that Powell is due a refund of excise taxes.

12. Kathy Herman manages the daily operations of Powell's retail fueling facilities. She knows who exempt customers are and pricing. Bob Hummel prepares the Forms 8849 and keeps all records related to tax exempt sales. Bob also maintains all fuel purchasing records. Doug Goss is Powell's accountant and is familiar with all aspects of the facts as they relate to this case. Keith Powell is the VP of Powell and is familiar with all aspects of the facts as they relate to this case.

Respectfully submitted,



Cloyd F. Van Hook
Guarisco & Cordes, LLC
601 Poydras Street, Ste 2355
New Orleans, LA 70130
Phone: (504) 587-7007
Fax: (504) 587-9067
Email: cloyd@gctaxlaw.com
Attorney for J. J. Powell, Inc.

Dated: May 15, 2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

* * * * *

J. J. Powell, Inc. *

*

Plaintiff *

*

v. *

NO. 1:13-cv-00353-LJB
Judge Lynn J. Bush

*

UNITED STATES OF AMERICA *

*

Defendant *

*

* * * * *

PLAINTIFF'S RESPONSE TO
DEFENDANT'S INTERROGATORIES – SET NO. 2

13. With respect to plaintiff's sale of gasoline and diesel fuel at cardlock fueling islands during the periods in issue:

- a. Non-taxable customers were not charged tax. These customers are flagged so that we can sum total non-taxable gallons purchased by customer during the month.
- b. Taxable customers are charged the tax and no further accounting is needed because tax is prepaid.
- c. Bob Hummel, Keith Powell, and Kathy Herman.
- d. Documents already given. Invoices for fuel purchased and detailed transactions show tax flags.

14. Cardlock is a generic name for a commercial fueling island whereby commercial customers energize fuel pumps by inserting a card and a PIN. Thousands of these sites exist across the country. Some of the national names include Pacific Pride, CFN, and Fuelman. Cardlock and fuel management are synonymous.

Defendant
Exhibit

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a. Many persons at J.J. Powell, Inc., including but not limited to Bob Hummel, Keith Powell, and Kathy Herman.

b. Documents already provide, invoices being provided and card application being provided.

15. With respect to cards issued:

a. Pacific Pride Cards were issued. JJ Powell Inc was the issuing entity. Commercial and governmental agencies received the cards. Terms are on the card application being provided.

b. 1991-Present.

c. Many persons at J.J. Powell, Inc., including but not limited to Bob Hummel, Keith Powell, and Kathy Herman.

d. Card application, sales reports.

16. Plaintiff does not contend that the price it charges for gasoline and diesel sold to customers for nontaxable purposes was determined by the market independently of the price charged for taxable purposes. The price charged for nontaxable purposes is the price charged for taxable purposes less any taxes the particular customer is exempt from. The market price for taxable purposes is addressed in Interrogatory Number 17.

17. With respect to the market price for taxable fuel.

a. Plaintiff takes a market survey every Friday. Plaintiff objects to explaining how it uses the market survey to set its prices because that information is a trade secret. Plaintiff also objects because how it sets its prices is irrelevant since the price it pays when it purchases fuel includes federal excise taxes.

b. Kathy Kerman, Jeff Powell and Keith Powell.

c. Copies of market price surveys are being provided.

18. As stated in the letter the base cost was \$2.0635 on May 6, 2010. That price includes no tax. Add the 14 cents yields a price of \$2.2035. Attached is the State College Area School District Bid form that states "The prices quoted herein are exclusive of federal excise tax..."

- a. Plaintiff's bid form is provided.
- b. Keith Powell.

19. The federal excise tax is included in the price Plaintiff pays for fuel. There is no need to account for it.

- a. Plaintiff owns some of the retail fueling items that its customers use. Plaintiff objects to identifying which ones it owns because it is not relevant. Taxable customers were charged tax, which was included in Plaintiff's cost of the fuel, at both Plaintiff owned and non-owned retail fueling islands
- b. Many persons at J.J. Powell, Inc., including but not limited to Bob Hummel, Keith Powell, and Kathy Herman.
- c. Invoices for fuel purchased by J. J. Powell, Inc. and invoices to customers.

20. This has been addressed in other Interrogatories and Requests for Production of Documents.

- a. The overwhelming majority of nontaxable sales occur at J. J. Powell, Inc. owned locations. Where sales occur at location not owned by Plaintiff, Plaintiff pays site owner for fuel and taxes then sells fuel to exempt entity without tax.
- b. Bob Hummel, Kathy Herman, Keith Powell
- c. Customer Federal Excise Report

21. With respect to why Plaintiff is not liable for the IRC section 6675 penalty:

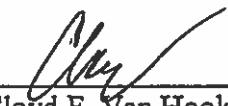
a. Plaintiff had exemption certificates for tax exempt customers, paid federal excise taxes when fuel was purchased, did not charge federal excise taxes to tax exempt customers and requested legal refunds of federal excise taxes for fuels sold for nontaxable purposes on Forms 8849.

b. Bob Hummel, Keith Powell, and Kathy Herman.

c. All of the documents provided by Plaintiff.

22. This was addressed in Interrogatory Number 13.

Respectfully submitted,



Cloyd F. Van Hook
Guarisco, Cordes & Lala, LLC
601 Poydras Street, Ste 2355
New Orleans, LA 70130
Phone: (504) 587-7007
Fax: (504) 587-9067
Email: cloyd@gctaxlaw.com
Attorney for J. J. Powell, Inc.

Dated: August 29, 2014



U.S. Department of Justice

Trial Attorney: Jennifer Dover Spriggs
 Attorney's Direct Line: 202-307-0840
Jennifer.D.Spriggs@usdoj.gov

TWA:DAP:GRS:JDSpriggs
 154-3043
 CMN 2013101878

Tax Division

Please reply to: Court of Federal Claims Section
 P.O. Box 26
 Washington, D.C. 20044
 Fax No. 202-514-9440

AUG 1 2014

Via E-mail (cloyd@gctaxlaw.com)
 and First Class Mail

Cloyd F. Van Hook
 Guarisco & Cordes, LLC
 601 Poydras Street, Suite 2355
 New Orleans, Louisiana 70130

Re: J.J. Powell, Inc. v. United States,
Fed. Cl. No. 13-353 T

Dear Mr. Van Hook:

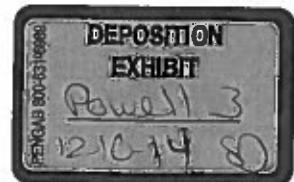
As we discussed, I reviewed the documents plaintiff provided to the government in response to defendant's first discovery requests. Based upon my review of the documents plaintiff provided to defendant, I have the following questions and comments:

1. Attached as Ex. 1 is a schedule provided by plaintiff and described as "September 2009 Exempt Gas Sales Thru Cardlock."
 - (a) Explain the unit of measure used in the attached schedule to report exempt gas sales, i.e., dollars, gallons, etc.
 - (b) Explain how plaintiff used the information contained in the attached schedule.
 - (c) Explain the information contained in the "exempt federal" column in the attached schedule.
 - (d) Explain the information contained in "SCH 09" and "SCH 10" referenced in the attached schedule.
2. Attached as Exhibit 2 is an untitled document provided by plaintiff.
 - (a) Provide the title for the attached document and explain how plaintiff used the information contained in the attached document.
 - (b) Explain the "tax flags" column contained in the attached document.

Defendant
Exhibit

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A-210



3. Attached as Exhibit 5 is a schedule provided by plaintiff and described as "August 2009 Exempt Diesel Sales Thru Cardlock."
 - (a) Explain the unit of measure used in the attached schedule to report exempt diesel sales, *i.e.*, dollars, gallons, etc.
 - (b) Explain how plaintiff used the information contained in the attached schedule.
 - (c) Explain the information contained in the "exempt federal" column contained in the attached schedule.
 - (d) Explain the information contained in "SCH 09" and "SCH 10" referenced in the attached schedule.
4. Attached as Exhibit 6 is a schedule provided by plaintiff and described as "Customer Federal Excise Report."
 - (a) Explain the unit of measure used to report the amounts contained in the column labeled "quantity" in the attached document, *i.e.*, dollars, gallons, etc.
 - (b) Explain how plaintiff used the information contained in the attached document.
 - (c) Explain "Sale Type L" referred to in the attached document.
 - (d) Explain "Sale Type P" referred to in the attached document.
5. Attached as Exhibit 7 is an untitled document provided by plaintiff.
 - (a) Provide the title for the attached document and the period(s) to which it applies.
 - (b) Explain the unit of measure used in the attached document *i.e.*, dollars, gallons, etc.
 - (c) Explain how plaintiff used the information contained in the attached document.
 - (d) Explain the numerical total for the column labeled "federal" in the attached document.
 - (e) Explain the information contained in "SCH 09" and "SCH 10" referred to in the attached document.
6. Attached as Exhibit 8 is a document provided by plaintiff and labeled "Product Ranking Report."
 - (a) Explain the information contained in the attached document.
 - (b) Explain how plaintiff used the information contained in the attached report.
7. Attached as Exhibit 9 is a document provided by plaintiff and labeled "3rd Quarter 2009 Federal Exempt Diesel."
 - (a) Explain the information contained in the attached document.
 - (b) Explain how plaintiff used the information contained in the attached document.
 - (c) Explain the term "Fuel Mgmt" referred to in the attached document.
 - (d) Explain the term "DELD" referred to in the attached document.

- 3 -

In Defendant's First Request for Production of Documents Nos. 2-3 ("Requests Nos. 2-3") defendant sought a representative sample of the invoices prepared in connection with plaintiff's sale of gasoline and diesel fuel to customers who purchased fuel for taxable as well as nontaxable purposes during the periods in issue. In reviewing the documents provided by plaintiff, I did not find documents responsive to Defendant's Requests Nos. 2-3. I ask that you provide the documents sought in Requests Nos. 2-3. If plaintiff previously provided those documents, please explain where they may be located.

In Defendant's Request No 7, defendant sought copies of each Form 8849 filed by plaintiff with the Internal Revenue Service with respect to the excise tax at issue in this action, including the documents relied upon by plaintiff in preparing each Form 8849. In reviewing the documents provided by plaintiff, I did not find documents responsive to Request No. 7. I ask that you provide the Forms 8849 filed by plaintiff for the quarters ending September 30, 2009, March 31, 2010, June 30, 2010, September 30, 2010, and December 31, 2010, along with the requested supporting workpapers. If plaintiff previously provided those documents, please explain where they may be located.

If you have any questions or comments, I can be reached at Area Code 202, 307-0840.

Sincerely yours,

Jennifer Dover Spriggs
Jennifer Dover Spriggs
Trial Attorney
Court of Federal Claims Section

Enclosures as stated

SEPTEMBER 2009
EXEMPT GAS SALES THRU CARDLOCK

	Initials	Date
Prepared By		
Approved By		



0:21:26

** Edit/Print Transactions **
Includes All Transactions

Page: 34

Selling Host: 616 J. J. Powell, Inc.

AMX 422 West Linn Street, Bellefonte PA Site Region: CEN

Buy Co Hut # Customer	Driver Dvr Veh Card # N	Transaction Date Time N	Trans Seq #	Prod Unit N	Unit Price Cost	Tax Flags	Sales Tax	Quantity	A/R Date	Booking Date	Error Codes
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BUYING HOST TOTALS:

	QTY	AMOUNT	COST	# TRANS
506 Christoff-Mitchell Petroleum.	9.500	24.35	23.88	1
514 Guttman Oil Co.	74.750	196.45	192.71	3
594 Edris Oil Service, Inc.	31.020	82.76	81.21	1
598 Snedeker Oil Co, Inc.	32.560	81.18	79.55	1
616 J. J. Powell, Inc.	1,616.550	3,964.61	3,660.19	83
994 Wright Express	40.780	109.81	107.77	2
Totals:	1,805.160	4,459.16	4,145.31	91

PRODUCT TOTALS:

2 UNLEADED REGULAR GASOLINE	905.830	2,134.81	1,956.31	58
4 UNLEADED PREMIUM GASOLINE	36.200	95.27	84.60	4
25 OFF ROAD NON-TAX DIESEL	111.190	244.30	208.16	2
45 ULTRA LOW DSL #2	751.940	1,984.78	1,896.24	27
Totals:	1,805.160	4,459.16	4,145.31	91

Selling Host: 616 J. J. Powell, Inc.

AMX 105 Wilson Street, Centre Hall

PA Site Region: CEN

616 1 10576 SHAWLEY EX 2782758 1	09/01/09 5:04	273 0	25 1.93830U 2.19717	YYYYYN	50.090 09/30/09 09/30/09
616 1 10537 CENTRE COU 3535799 1	09/01/09 6:03	274 0	45 1.99390U 2.21500	NNNNYN	32.380 09/15/09 09/30/09
616 1 10043 ROBINSON'S 2782995 1	09/01/09 6:46	275 0	45 2.61790U 2.85900	YYYYYN	78.550 09/30/09 09/30/09
616 1 10970 MELVILLE, 3070079 1	09/01/09 7:50	276 0	25 1.93830U 2.19717	YYYYYN	10.010 09/30/09 09/30/09
616 1 1 POWELL INC 2392202 1	09/01/09 7:56	277 0	28 2.19340U	NNNNYY	400.400 09/30/09 09/30/09 18
616 1 11365 KITKO, DAV 3325972 1	09/01/09 9:22	278 0	45 2.61790U 2.85900	YYYYYN	31.990 09/15/09 09/30/09
616 1 11224 BEAVERTOWN 8383598 1	09/01/09 9:26	279 0	45 2.61790U 2.85900	YYYYYN	45.000 09/15/09 09/30/09
616 1 10759 WOLFE, WAD 3070854 1	09/01/09 9:43	284 0	45 2.61790U 2.85900	YYYYYN	47.080 09/30/09 09/30/09
616 1 1 POWELL INC 2392202 1	09/01/09 10:40	285 0	25 1.93830U	NNNNYY	800.100 09/30/09 09/30/09 18
616 1 11095 MAXWELL TR 3738454 1	295 09/01/09 12:49	286 0	45 2.61790U 2.85900	YYYYYN	110.010 09/15/09 09/30/09
616 1 11179 LUSE, CHRI 3070987 1	09/01/09 13:49	287 0	25 1.93830U 2.19717	NNNNYN	4.900 09/30/09 09/30/09
616 1 1 POWELL INC 2392202 1	09/01/09 14:02	289 0	25 1.93830U	NNNNYY	898.100 09/30/09 09/30/09 18
616 1 1 POWELL INC 8383629 1	09/01/09 14:09	290 0	45 2.61790U	YYYYYN	29.000 09/30/09 09/30/09 18
616 1 10657 SWANK EXCA 2484109 1	09/01/09 15:35	291 0	45 2.61790U 2.85900	YYYYYN	47.100 09/30/09 09/30/09
616 1 11116 ROWLES, MI 3070785 1	09/01/09 20:20	292 0	45 2.61790U 2.85900	YYYYYN	24.990 09/30/09 09/30/09
616 1 11057 GALLIKER D 3738498 1	09/01/09 20:52	293 0	45 2.61790U 2.85900	YYYYYN	70.000 09/30/09 09/30/09
616 1 11625 U. S. FISH 3738125 1	09/02/09 7:55	294 0	25 1.86600U 2.19717	NNNNYN	105.010 09/30/09 09/30/09
616 1 11326 R & R PENC 3325745 1	09/02/09 7:57	295 0	45 2.54707U 2.85900	YYYYYN	25.930 09/30/09 09/30/09
616 1 11269 WEBB'S SUP 3325427 1	09/02/09 8:24	296 0	45 2.54707U 2.85900	YYYYYN	12.980 09/15/09 09/30/09
616 1 11752 WAM TRANSP 8253113 1	09/02/09 8:34	297 0	45 2.54707U 2.85900	YYYYYN	64.980 09/15/09 09/30/09
616 1 10657 SWANK EXCA 2484109 1	09/02/09 8:44	299 0	45 2.54707U 2.85900	YYYYYN	31.980 09/30/09 09/30/09
616 1 1 POWELL INC 2392202 1	09/02/09 8:53	300 0	28 2.15090U	NNNNYY	600.000 09/30/09 09/30/09 18
616 1 1 POWELL INC 2392202 1	09/02/09 8:57	302 0	25 1.86600U	NNNNYY	657.900 09/30/09 09/30/09 18
616 1 11365 KITKO, DAV 3325972 1	09/02/09 9:04	303 0	45 2.54707U 2.85900	YYYYYN	29.990 09/15/09 09/30/09
616 1 11057 GALLIKER D 3535572 1	09/02/09 9:29	305 0	25 1.86600U 2.19717	NNNNYN	14.220 09/30/09 09/30/09
616 1 11057 GALLIKER D 3535571 1	09/02/09 9:30	304 0	45 2.54707U 2.85900	YYYYYN	56.900 09/30/09 09/30/09
616 1 10759 WOLFE, WAD 3070854 1	09/02/09 9:47	307 0	45 2.54707U 2.85900	YYYYYN	47.520 09/30/09 09/30/09
616 1 1 POWELL INC 2192202 1	09/02/09 10:15	309 0	25 1.86600U	NNNNYY	478.000 09/30/09 09/30/09 18

EXHIBIT

HOLDBU01 V8 D-0

A-2

2

AUGUST 2009

EXEMPT DIESEL SALES THRU CARDLOCK

Initials	Date
Prepared By	
Approved By	

	CUSTOMER	EXEMPT FEDERAL	EXEMPT STATE	
1	Taylor Twp	22752	22752	/
2	Wester Hill Boro	3315	3315	/
3	Pburg Boro	9148	9148	/
4	Reliance Fire Co	6913	6913	* /
5	No Valley EMS	0	✓	82132 * /
6	Columbra Fire Co	10494	✓	10494 /
7	Bald Eagle Fire Co	6002	✓	6002 /
8	Snyder Twp	40796		40796 /
9	Typease School	11312		11312 /
10	Logan Fire Co	6886	✓	6886 /
11	LITE EMS	0	✓	55024 /
12	Hope Fire Co	13839	✓	13839 * /
13	All Top Fire Co	1575	✓	11575 /
14	Pettion Twp	25616		25616 /
15	Holloman Twp	7556		7556 /
16	RHT Boro	116095		116095 /
17	Penn Valley EMS	0	✓	31842 /
18	Centre Hall Fire Co	5865	✓	5665 /
19	Centre Co Library	24171		24171 /
20	Centre Co Office of Trans	19953		19953 /
21	Alpha Fire Co	11955	✓	11955 /
22	Undine Fire Co	11612	✓	11612 /
23	Proper Twp	17566		17566 /
24	PA School	8922		8922 /
25	Centre Hall Boro	2500		2500 /
26	Groop Twp Fire Co	2211	✓	2211 /
27	Mifflin Co Solid Waste	7228		7228 /
28	Wport Airport	4160		4160 /
29	Rush Twp	2512		2512 /
30	Mberg Boro	10029		10029 /
31	Walker Twp Fire Co	9664	✓	9664 /
32	Perkbank Valley School	31227		31227 /
33	CHL EMS	0	✓	91283 * /
34		482124	✓	718205 /
35			✓	718000 ALM TEST
36				751505
37	EXHIBIT			
38	5			
39				
40				
41				
42				
43				
44				
45				

2009/09/02 10:42:46

Customer Federal Excise Report

Page 1

Booking Date from 08/31/09 thru 08/31/09

Product Class D

Products

Sites

Customers from 1 thru 99999

Product Line

Customer Misc. Code

Tax Flag E (E=Exempt, P=Payable)

Sales Type(s) L/S & F/F

*FEDERAL
DIESEL*

(Transaction Detail if present)

(Selling Host & Site)

(Date & Time)

Tax

Tax

Quantity

Rate

Amount

11369 2 MARK SERVICES

338 WINTERS DRIVE
WEST DECAUILL, PA 16878

339-7023

----- Sale Type L -----

Product Totals... 25 OFF ROAD NON-TAX DIE 11.03 .00

----- Sale Type P -----

Product Totals... 59 #2 RED ULTRA LOW SUL 11.99 .00
Totals for Customer 11369..... 23.02 .00

11532 ALLEGHENY LOGGING CO.

93 CROWSFOOT LANE
MORRISDALE, PA 16858

345-5460

----- Sale Type L -----

Product Totals... 25 OFF ROAD NON-TAX DIE 196.05 .00
Totals for Customer 11532..... 196.05 .00

11760 ALPHA FIRE DEPARTMENT

PATTON TOWNSHIP 400 W. BEAVER AVENUE
STATE COLLEGE, PA 16801

237-4127

23-2982974

----- Sale Type L -----

Product Totals... 45 ULTRA LOW DSL #2 119.55 0.24300- 29.05-
Totals for Customer 11760..... 119.55 29.05-

11765 ANDRONICUS ASSOCIATES

202 THUNDERHILL ROAD
CENTRE HALL, PA 16828

883-9327

----- Sale Type L -----

Product Totals... 25 OFF ROAD NON-TAX DIE 4.07 .00
Totals for Customer 11765..... 4.0700

11078 ARAWAY, JOE

212 LANCE HILL ROAD PO BOX 258
WINBURN, PA 16879

814 345-6884

----- Sale Type L -----

Product Totals... 25 OFF ROAD NON-TAX DIE 149.98 .00
Totals for Customer 11078..... 149.9800

J. J. Powell, Inc.

TRANSR06 v8.0.0

EXHIBIT

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A-216

CUSTONER	FEDERAL		SCH 10	STATE
Chester Hill Boro	6485	✓		6485 ✓
Chester Hill Fire Co	8891	✓	✓	8891 ✓
PDA School	17740	✓		17740 ✓
Burgboro	27185	✓		27185 ✓
Mo Valley EMS	0		✓	19419 ✗ ✓
Columbia Fire Co	1500	✓	✓	1500 ✗ ✓
Bald Eagle Fire Co	1381	✓	✓	1381 ✓
Snyder Twp	1283	✓		1283 ✓
Tyrone School	10033	✓		10033 ✓
Logan Fire Co	1783	✓	✓	1783 ✗
RTE EMS	0		✓	20344 ✓
Hope Fire Co	2295	✓	✓	2295 ✓
Mt Top Fire Co	7745	✓		7745 ✓
Fenton Twp	132750	✓		132750 ✓
Holloman Twp	3479	✓		3479 ✓
BEL Boro	122558	✓		122558 ✓
Centre Co Library	2992	✓		2992 ✓
Centre Co Office of Trans	274556	✓		274556 ✗ ✓
" " "	705232	✓		705232 ✗ ✓
Renner Twp	6400	✓		6400 ✗
RHAE School	71634	✓		71634 ✗ ✓
CYAD Co Mun Service Auth	9401	✓		9401 ✗ ✓
Spring Twp	36312	✓		36312 ✓
Wpnt Airport	9200	✓		9200 ✓
Rush Twp	15499	✓		15499 ✓
Albion Coro	7303	✓		7303 ✓
Centre Hall Potter Sewer	1500	✓		1500 ✗ ✓
Marcus Twp	5837	✓		5837 ✓
Redbank Valley School	23789	✓		23789 ✓
Union Twp	2599	✓		2599 ✓
Warriors Mark Water Auth	785			785 ✓
	1518147	✓		1518147 ✗
				+ 2000 PUNTEST
				1551910
EXHIBIT				
7				
			SCH 09	1401552
			10	57358

Product Ranking Report

J. Powell, Inc.

Effective Date 03/21/2009

500 PPM LS NRLM	1.5245 Conoco-Phillips	PPC Altoona
1.4647 PPC Altoona	1.5300 Sunoco@PPC	Farm & Home
1.4875 Sunoco@PPC	1.5652 PPC Altoona	BP-Amoco Altoona
15 PPM ULSD NRLM	1.6260 Farm & Home	E10 87 OCT
1.4750 F&H-Williamsport	500 PPM L/S	1.3690 Farm & Home
1.4755 Conoco-Phillips	1.4801 Sunoco@PPC	1.3984 PPC Altoona
1.4810 Farm & Home	500 PPM L/S DYED	1.4009 BP-Amoco Altoona
1.4814 Motiva Ent. (Texaco)	1.4647 PPC Altoona	1.4360 Conoco-Phillips
1.4850 PPC Altoona	1.4875 Sunoco@PPC	E10 89 OCT
1.4909 BP-Amoco Altoona	500 PPM KERO CLEAR	1.4459 PPC Altoona
1.5350 Sunoco@PPC	1.5195 Conoco-Phillips	1.4560 Farm & Home
15 PPM ULSD	1.5251 Sunoco@PPC	1.4702 BP-Amoco Altoona
1.4700 F&H-Williamsport	1.5602 PPC Altoona	1.4960 Conoco-Phillips
1705 Conoco-Phillips	1.6210 Farm & Home	E10 93 OCT
1.4760 Farm & Home	REGULAR GAS 87	1.5597 PPC Altoona
1.4764 Motiva Ent. (Texaco)	1.3790 Farm & Home	1.5929 BP-Amoco Altoona
1.4801 PPC Altoona	1.3950 F&H-Williamsport	1.5960 Conoco-Phillips
1.4863 Williamsport - Motiva	1.3980 Conoco-Phillips	1.6080 Farm & Home
1.4880 BP-Amoco Altoona	1.4108 PPC Altoona	DYED H/O UNMARKE
1.5300 Sunoco@PPC	1.4454 BP-Amoco Altoona	1.4100 F&H-Williamsport
15 PPM ULSD DYED	MID GRADE GAS 89	1.4122 Sunoco@PPC
1.4750 F&H-Williamsport	1.3980 F&H-Williamsport	1.4127 PPC Altoona
1.4755 Conoco-Phillips	1.4580 Conoco-Phillips	1.4130 Farm & Home
1.4810 Farm & Home	1.4660 Farm & Home	1.4240 Conoco-Phillips
1.4814 Motiva Ent. (Texaco)	1.4756 PPC Altoona	Unmrkd H/O for MFG
1.4850 PPC Altoona	1.5147 BP-Amoco Altoona	1.4100 F&H-Williamsport
4909 BP-Amoco Altoona	PREMIUM GAS	1.4122 Sunoco@PPC
1.5350 Sunoco@PPC	1.4450 F&H-Williamsport	1.4127 PPC Altoona
500 PPM KERO DYED	1.5580 Conoco-Phillips	1.4130 Farm & Home
	1.6018	1.4240 CONOCO

EXHIBIT

3RD QTR 2009 FEDERAL EXEMPT DIESEL

FUEL MIGNT	TAYLOR CHILL CHILL TWP 8000 FC POA Lined FC FC FC Twp School FC FC	POLK RELIANCE COLUMBIA BE Snydir Tyronne LOGAN Free FC FC
JULY	18059 4695 3596 344 24640 9600 7946 16807 33405 15005 16776 11055	
AUG	22752 3315 - - 9148 6913 10494 6002 40796 11312 6886 13839	
SEPT	2624 1820 1650 - 10095 3722 3501 4777 26828 78602 6555 5310	
TOTAL	43405 9830 5246 344 43883 20285 21901 27586 101029 104919 30217 30204	
	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	
FUEL MIGNT	MINT PATON HUNF BLIT CHILL CENTRE LINING BENHEP BLFT GREEG CLINTON TOP TWP MIRON BRO CO CO TWP SCHOOL FC TWP CO WASTE	
JULY	16378 58423 9597 123792 6049 21467 18006 1883 38821 13744 3162 18007	
AUG	11575 15616 7556 116495 5665 24171 19953 11612 17566 8922 2211 7278	
SEPT	9088 72150 7858 110301 7049 16871 21817 9306 19819 510966 3187 17029	
TOTAL	37041 176189 25011 350588 18763 62509 59776 32801 76206 533632 8560 42314	
	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	
FUEL MIGNT	IMPORT RUSH MCLEOD CH OFFICE VALLEY RED WALL ALPHA OAKL SAVON SPRING AIRE POAT TWP 8000 POTTER H&L TWP BANK BOGS FC DOPO MEL GILLS TWP	TOTALS
JULY	2714 9909 6305 3001 3379 5433 4201 1500 7523 - - -	539722
AUG	1160 2512 10029 - - 9664 31227 - 11955 2500 - -	482124
SEPT	2282 1937 5556 2951 - 3806 110408 - 2881 - 1629 2999	10883.96
TOTAL	9156 11880 21890 5952 3279 18703 145836 1500 22259 2510 1629 2999	211024.2
	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	
JULY	LAWRENCE POTTEN PG UNION WALKER BOGGS KORTHAUS MORRIS TWP TWP FC SBW TWP EG TWP TWP TWP	TOTALS
JULY	1200.0 509.5 344.5 568.1 396.4 472.0 - - -	3490.5
AUG	1200.0 - 462.6 744.9 - - 438.2 284.8 -	3130.5
SEPT	- 509.2 248.2 416.5 609.1 - 402.3 - 669.6	2854.9
TOTAL	2400.0 1018.7 1055.3 1729.5 1005.5 472.0 840.5 284.8 669.6	9475.9
	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	
FUEL MIGNT	21102.42	
DEBD	9475.90	
TOTAL	30578.32 X 24.3 = \$ 7430.45	

EXHIBIT

9

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August 29, 2014

Ms. Jennifer Dover Spriggs
U.S. Department of Justice
Tax Division
Court of Federal Claims Section
Post Office Box 26
Ben Franklin Post Office
Washington, D.C. 20044

RE: J. J. Powell, Inc. v United States of America
No. 1:13-cv-00353-LJB

Dear Ms. Spriggs:

The following answers are provided by Plaintiff in response to the questions you posed in your letter of August 1, 2014.

1. A. Unit of measure is gallons (ex. Chester Hill Boro 86.54 gallons)
B. Information is used to obtain the total gallons purchased by exempt entities.
C. Listed are the gallons purchased in September 2009 by each exempt entity.
D. The worksheet serves a dual purpose in preparation of both Federal and State tax returns. SCH 09 and SCH 10 pertain only to state tax preparation signifying separate entities.
2. A. Transaction Report details every transaction.
B. See pdf. entitled Tax Flags which will be sent by email. The "Y" and "N" indicate whether or not a particular customer is subject to a particular tax, e.g. Federal excise, State Excise, etc.
3. Please refer to information provided for question 1.
4. A. Unit of measure is gallons.
B. Sales to exempt entities are gathered from this report.
C. L are local sales which means the sales were made at a J. J. Powell owned site.
D. P are foreign purchases which means that the customer got the fuel at a site not owned by J. J. Powell Inc.

Defendant
Exhibit

5.
 - A. August 2009 exempt gas sales through Cardlock
 - B. Gallons
 - C. Sales to exempt entities are gathered from this report.
 - D. Total gallons sold to exempt entities for this period.
 - E. Please refer to question 1(d)

6.
 - A. Prices of various fuel products excluding tax.
 - B. Used to make purchasing decisions.

7.
 - A. This worksheet is used to obtain the total sales for the quarter for each exempt entity. The sum of the monthly sales is reported on SCH 2 of the Form 8849.
 - B. Sales to each exempt entity are entered monthly and totaled for quarterly sales.
 - C. "Fuel Management" represents sales to the exempt entity through cardlock purchases.
 - D. "DELD" represents sales of product delivered to the exempt entity's tank via our company truck.

Requests made in paragraphs on page 3.

Invoices are being provided but we have previously provided monthly reports on purchases by all customers including product, sales, and gallons. We have also provided transaction reports which detail every individual transaction.

8849's were supplied in .pdf files. 3rd quarter 2009 8849's were in the July 2009 Fed Diesel and July 2009 Fed Gas pdf files. 4th quarter 2009 8849's were provided in the October 2009 Fed Diesel and October 2009 Fed Gas pdf files and so on for 2010.

Very truly yours,



Cloyd F. Van Hook

Powell, Robert Keith

December 10, 2014

1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

-----:
J.J. POWELL, INC., :
Plaintiff, :
: Civil Action No.
vs. : 1:13-cv-00353-LJB
:
:
:
THE UNITED STATES, :
Defendant. :
-----:

ORIGINAL

DEPOSITION OF J.J. POWELL, INC. THROUGH ITS
DESIGNEE ROBERT KEITH POWELL
State College, Pennsylvania
Wednesday, December 10, 2014
9:33 a.m.

Reported by: Stacey L. Daywalt

Defendant
Exhibit

27

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December 10, 2014

2

1 Deposition of J.J. Powell, Inc. through its
2 designee ROBERT KEITH POWELL taken
3 at:

4 Magisterial District Court, 49-1-01
5 131 South Fraser Street, Suite 5
6 State College, Pennsylvania 16801

7

8 Pursuant to notice, before Stacey L.
9 Daywalt, Notary Public in and for the Commonwealth
10 of Pennsylvania.

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December 10, 2014

3

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 CLOYD F. VAN HOOK, ESQUIRE

4 GUARISCO & GORDES, LLC

5 601 Poydras Street, Suite 2355

6 New Orleans, Louisiana 70130-6008

7 (504) 587-7007

8

9 ON BEHALF OF DEFENDANT:

10 JENNIFER DOVER SPRIGGS, ESQUIRE

11 U.S. DEPARTMENT OF JUSTICE

12 555 4th Street NW, Room 8116

13 Washington, DC 20044

14 (202) 307-0840

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December 10, 2014

4

1

C O N T E N T S

2

3	WITNESS:	Robert Keith Powell	PAGE
4		By Ms. Spriggs	5

5

6

E X H I B I T S

7

	NUMBER	DESCRIPTION	PAGE
8	1	Deponent Designation	9
9	2	List of tax exempt customers	24
10	3	Letter dated 8/1/14	50
11	4	Motor Fuel Price Survey	62
12	5	Pacific Pride Fuel Card Order Form	66
13	6	Letter of Registration	67
14	7	Bellefonte Borough invoice	72
15	8	Lezzer Lumber invoice	75
16	9	Setup screen	76
17	10	Exemption Certificates	77
18	11	Claim for Refund and Request for Abatement	81

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5

PROCEEDINGS

2 Thereupon,

ROBERT KEITH POWELL,

4 was called as a witness by Counsel for the
5 Defendant, and having been duly sworn by the Notary
6 Public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 BY MS. SPRIGGS:

9 Q. And could you state your name for the
10 record?

11 A. Robert Keith Powell.

Q. And could you spell your last name?

$$^{13} \quad A_1 \quad P=Q=W=F=L_1=L_2$$

14 Q. My name is Jennifer Spriggs, and I'm here
15 today on behalf of the United States with respect
16 to a lawsuit that's been filed by J.J. Powell, Inc.
17 versus the United States. You've been called here
18 today to testify with respect to that lawsuit.

19 Have you been designated to testify on
20 behalf of J.J. Powell, Inc.?

21 A Yes

²² Q. Do you have a written designation?

23 A Yes

24 Q. So it says, "Keith Powell will testify
25 for the plaintiffs on all matters relevant to this

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6

1 action except the preparation of Forms 8849, the
2 Claim For Refund of Excise Tax."

3 A. That's correct.

4 Q. So are you prepared to testify on the
5 matters set forth in the designation?

6 A. Yeah.

7 Q. Have you had your deposition taken
8 before?

9 A. I think so.

10 Q. How many times?

11 A. Maybe once or twice.

12 Q. Okay. Well, today we have a court
13 reporter here. She's transcribing what we say.

14 So if you will wait until I finish my
15 question so that we don't overlap, because she's
16 trying to take down what we say. And she will need
17 for you to answer verbally because she needs to be
18 able to transcribe what you say. So if you nod,
19 she can't transcribe that.

20 If you don't understand any question I
21 ask, let me know and I'll try to rephrase it.

22 Is there any reason today that you're not
23 able to testify?

24 A. No.

25 Q. And if you need a break or anything like

Powell, Robert Keith

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7

1 that, just let me know.

2 This deposition is taken pursuant to the
3 rules of the Court of Federal Claims.

4 And where are you currently employed?

5 A. J.J. Powell, Incorporated.

6 Q. And could you give your business address?

7 A. 109 West Prescott Street, Philipsburg,
8 Pennsylvania 16866.

9 Q. And what is your job title?

10 A. Vice president.

11 Q. And how long have you been vice
12 president?

13 A. Eighteen years.

14 Q. And where were you employed before J.J.
15 Powell?

16 A. Nowhere.

17 Q. Okay. And what are your responsibilities
18 as the vice president?

19 A. My responsibilities include accounting,
20 operations of convenience stores, petroleum sales
21 and the oversight of Human Resources.

22 Q. And did you attend college?

23 A. I did.

24 Q. And where did you attend college?

25 A. Clarion University.

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8

1 Q. And where is that located?

2 A. Clarion, Pennsylvania.

3 Q. And when did you graduate?

4 A. 1990.

5 Q. And what was your degree in?

6 A. B.S. in finance.

7 Q. Do you have any graduate education?

8 A. I do.

9 Q. And what degree do you have?

10 A. I don't have a degree.

11 Q. Okay. What is the graduate education?

12 A. Some Master's classes at University of
13 Phoenix.

14 Q. Okay. In what field?

15 A. Business.

16 Q. And do you have any professional
17 licenses?

18 A. I do not.

19 Q. When you graduated from college, when did
20 you -- where did you start to work?

21 A. J.J. Powell.

22 Q. And what was your job when you started?

23 A. Head floor sweeper.

24 Q. Okay. And how long did you do that?

25 A. A few years. Still do it today when I

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9

1 need to.

2 Q. During the periods in issue in this case,
3 which are the fourth quarter of 2009 through the
4 fourth quarter of 2010, could you describe what
5 J.J. Powell's business -- what business it's in?

6 A. Sure. We're in the petroleum
7 distribution business.

8 Q. So when you say "distribution," what does
9 that mean? Are you a wholesaler?

10 A. We sell petroleum to -- primarily, to end
11 users, and we deliver it in a number of ways,
12 anywhere from a full tractor trailer load of fuel
13 down to someone pulling in to a gas station or a
14 cardlock fueling facility where they can get as
15 little as a gallon.

16 MS. SPRIGGS: Before we go on, could you
17 mark this as Deposition Exhibit 1.

18 (Powell Deposition Exhibit No. 1 was
19 marked for identification.)

20 BY MS. SPRIGGS:

21 Q. You were explaining how you delivered the
22 fuel to the end users.

23 And you said you deliver by truck?

24 A. We deliver by truck, tractor trailer. We
25 deliver by small truck, which can deliver anywhere

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1 from 3,000 gallons to a percentage of a gallon.

2 We have gas stations. We have cardlock
3 fueling facilities. And we also deliver some
4 lubricants.

5 But primarily as far as the fuel
6 distribution goes, those four methods are the
7 primary methods that we employ.

8 Q. And who are your end users? In the
9 majority of your end users, who are they?

10 A. The majority? As far as a customer
11 account or as far as --

12 Q. Yes.

13 A. As far as a customer account, would
14 probably be heating oil customers.

15 Q. You mentioned different -- you said you
16 have gas stations?

17 A. We do.

18 Q. And then you said you have a cardlock
19 system?

20 A. Yes.

21 Q. Could you explain just the difference?

22 A. Sure. The difference, a gas station is a
23 manned facility where there are cashiers and
24 typically a store combined with gas pumps.

25 The cardlock facility is an unmanned

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1 facility that stands alone without a store that
2 just has fuel pumps. An end user has a card that
3 will turn the pumps on and accesses those, any one
4 of those gasoline or diesel pumps, to put that fuel
5 into the vehicle they're driving.

6 Q. So you have gas stations, cardlock system
7 and then you deliver by truck?

8 A. Mm-hmm.

9 Q. So those are the three basic ways that
10 you deliver?

11 A. That's correct.

12 Q. Now, if you go to a gas station, these
13 gas stations are -- what are they called?

14 A. Snappy's Convenience Stores.

15 And I guess to maybe try and help you
16 out, there are no nontaxable sales there.

17 Q. Okay. Would anything identify J.J.
18 Powell if you go to a Snappy's Convenience Store?

19 A. No.

20 Q. So they just -- so the customer goes to
21 Snappy's Convenience.

22 And how are they billed?

23 A. They are not billed. They either pay
24 with cash or use their credit card.

25 So it's all -- the transaction is

Powell, Robert Keith

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1 conducted there, and there's no accounts
2 receivable.

3 Q. Okay. If you get an invoice -- if you're
4 at a Snappy's Convenience and you get an invoice or
5 receipt when you purchase the fuel.

6 So are the pumps -- so the fuel in the
7 pumps at Snappy's Convenience are provided by J.J.
8 Powell?

9 A. They are.

10 Q. So all of the pumps are only -- so J.J.
11 Powell is the only person providing the fuel at
12 Snappy's Convenience?

13 A. Yes.

14 Q. So if I go to Snappy's Convenience, I
15 purchase gas for my car, I typically would get a
16 receipt that says the number of gallons I purchased
17 and the price?

18 A. Correct.

19 Q. And that's it?

20 A. Right.

21 Q. There's nothing about tax on the receipt?

22 A. No.

23 Q. So the person at Snappy's will get a
24 receipt that says gallons purchased and price?

25 A. Exactly, pretty much like any other gas

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1 station in the country.

2 Q. So if you go to the cardlock system, who
3 uses the cardlock system?

4 A. Those are typically commercial customers,
5 businesses, government entities.

6 Q. If one of your customers is a part of
7 your cardlock system, can they also go to Snappy's?

8 A. No.

9 Q. Okay. So they have to go to a cardlock
10 station? Is that what you call it?

11 A. Correct.

12 Q. So if your customer goes to the cardlock,
13 they purchase gas, does the receipt say gallons
14 purchased and show a price?

15 A. No.

16 Q. It doesn't show a price per gallon?

17 A. They don't get a receipt.

18 Q. Okay. So no receipt.

19 So what do they get?

20 A. At the end of the billing period, they
21 get an invoice.

22 Q. And is there -- do you have a standard
23 billing procedure or does --

24 A. I do.

25 Q. So for your cardlock, when would they

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1 receive a bill?

2 A. We've got a number of different billing
3 cycles, but typically it would be twice a month.

4 Q. And then what would they -- so when they
5 receive their invoice for the cardlock system, what
6 does it say?

7 A. It would -- it shows each individual
8 transaction with the gallons purchased, the price
9 per gallon, the total of the transaction and
10 whether or not there are taxes included or no tax.

11 Q. Now, what do you mean when you say it
12 shows whether tax is included or no tax?

13 A. On the taxes that are -- on the
14 transactions that are taxable, the note says "all
15 tax," and on the transactions that are nontaxable,
16 it says "no tax."

17 Q. Well, what does that mean in terms of --
18 you say there's a price?

19 A. Mm-hmm.

20 Q. You say there are gallons and there's a
21 price per gallon?

22 A. Mm-hmm.

23 Q. Which is the same thing that the customer
24 at Snappy's, he will have a price and number of
25 gallons?

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1 A. Yep.

2 Q. There's no -- there's no tax when you go
3 to Snappy's?

4 A. No, there's no tax that shows up, but the
5 tax is included in the price.

6 Q. Okay. The tax is included in the price
7 at Snappy's?

8 A. Yes.

9 Q. And so for your cardlock people or
10 customers, so is --

11 A. I'd be happy to show you, if that helps.

12 Q. Well, I'm trying to understand just the
13 procedure of what the --

14 A. It's just the billing is different.

15 There is -- it's two different systems.

16 Q. But you are giving -- the cardlock
17 customer does get a price per gallon?

18 A. Yes.

19 Q. And then you say something about whether
20 taxes included or taxes not included.

21 So some of your cardlock customers are
22 taxed?

23 A. Correct.

24 Q. And then some are not?

25 A. Correct.

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1 Q. So if a cardlock customer is taxed, then
2 the receipt will show -- what will it show?

3 A. All tax.

4 Q. And then will there be a number?

5 A. No.

6 Q. No number?

7 A. No.

8 Q. So what does that mean in terms of the --
9 so does the price --

10 A. That means there are taxes included in
11 the price.

12 Q. So that means that the price they're
13 charged per gallon includes tax?

14 A. Tax.

15 Q. Now, for your tax exempt customers who
16 use cardlock, then what does their -- what would
17 their receipt show?

18 A. No tax.

19 Q. So it will show a price per gallon?

20 A. Correct.

21 Q. Number of gallons. And then it will say
22 no tax.

23 And what does that mean?

24 A. That means there are no taxes included in
25 the per gallon price.

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1 Q. So if you -- in your cardlock system, you
2 have prices -- you have different prices for
3 different customers?

4 A. Rarely. The price of the fuel is rarely
5 different. The total price between the taxable and
6 the nontaxable customer is different by the amount
7 of the tax.

8 Q. Well, as I'm understanding this system as
9 you describe it, the tax -- whether or not the tax
10 is included has to do with the price that's being
11 charged per gallon, because you said there are only
12 two things really on the receipt, gallons and
13 price; so the price either includes tax or doesn't
14 include tax.

15 A. Correct.

16 Q. So if you have nontaxable customers
17 purchasing gas or diesel fuel in your cardlock
18 system, then is their price in your cardlock system
19 different from the price for your commercial --
20 your commercial taxable customers?

21 A. The price is different by the amount of
22 the taxes, by an amount equal to the taxes that are
23 not being charged to that tax exempt customer.

24 Q. So the price per gallon will be
25 different?

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1 A. Correct.

2 Q. So later on we'll try to go through and
3 look at some of the invoices, and so we should be
4 able to see for your commercial not taxable
5 customers a different price for gas per gallon than
6 the exempt entities?

7 A. Exactly.

8 Q. In this cardlock -- could you explain
9 what this cardlock system is?

10 A. It is a standalone fueling facility that
11 includes tanks underground, pumping system, gas
12 pumps on top of the ground, a card reader there
13 that accepts only specific commercial professional
14 fueling cards.

15 Q. What is that?

16 You said specific professional fueling
17 cards.

18 A. In Pennsylvania it is illegal to sell
19 retail -- a retail customer gasoline/diesel fuel at
20 an unattended site.

21 Q. You said in Pennsylvania it's illegal to
22 sell --

23 A. Gasoline or diesel fuel to a retail
24 customer at an unattended site.

25 Q. Okay. But these are unattended sites.

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1 A. Correct. That's why we can't sell to --
2 that's why you can't pull up there with your Visa
3 card and buy gas.

4 So it's only commercial customers that
5 can go to the cardlock facilities and get fuel.

6 Q. So when the commercial customer goes to
7 the cardlock system, you said they have a card?

8 A. Mm-hmm.

9 Q. Could you tell me about the -- explain
10 the card?

11 A. It's a card that is issued by J.J.
12 Powell.

13 Q. Now, when you say -- well, what kind of
14 card is it?

15 A. It's a Pacific Pride card.

16 Q. Okay. So you have a Pacific Pride card.
17 What is Pacific Pride?

18 A. Pacific Pride is a cardlock fueling
19 network franchisor.

20 Q. You said it's a --

21 A. Cardlock fueling network franchisor.

22 You're getting an education today.

23 Q. You said cardlock fueling?

24 A. Cardlock fueling network franchisor.

25 Q. Network franchisor.

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1 So what does that mean?

2 A. That means that Pacific Pride is
3 the franchise -- I'm not going to say that, am I?
4 They're a franchisor of cardlock fueling networks.

5 Q. So they own the network?

6 A. Right.

7 Q. It's a network of fueling cards?

8 A. Of fueling cards and fueling sites.

9 Q. What is the -- is there a difference
10 between a fueling card and a credit card?

11 A. No. It's a mag stripe card. It looks
12 like a credit card, has a mag stripe on the back.
13 It's pretty typical.

14 Q. So the J.J. -- what is the card that J.J.
15 Powell issues?

16 A. Is a Pacific Pride card.

17 Q. It will say on it --

18 A. It will say Pacific Pride J.J. Powell.

19 Q. So whose card is it actually? Is it
20 Pacific Pride's card or is it J.J. Powell's?

21 A. It is actually J.J. Powell's card.

22 Q. It's J.J. Powell's card?

23 A. It is.

24 Q. And is this a credit card?

25 A. It is.

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1 Q. It's a credit card?

2 A. We carry the -- J.J. Powell carries the
3 credit.

4 So if we issue the card to a commercial
5 customer, that customer goes and uses that card at
6 a site, we are holding the credit, carrying the
7 credit, until we bill them biweekly.

8 Q. They can only use the card -- well, where
9 can they use the card?

10 A. They can use the card at any Pacific
11 Pride site.

12 Q. So what does -- how does that work if
13 they go to -- so these are sites that J.J. Powell
14 doesn't own?

15 A. J.J. Powell owns all the sites that we're
16 looking at today as far as taxable/nontaxable
17 sales, but these customers can go to a different
18 state, to a different site that is not owned by
19 J.J. Powell and use that card.

20 Q. But for the nontaxable entities involved
21 in this lawsuit, you're saying that they all
22 involve sites owned by J.J. Powell?

23 A. Correct.

24 Q. So the -- if a customer comes to you,
25 they want the fuel card, they fill out an

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1 application, then what happens to it? Does Pacific
2 Pride have a role in --

3 A. No. We process the application, issue
4 the cards, carry the credit.

5 Pacific Pride only participates when they
6 are one of the transactions that we talked about
7 where a fueling customer from -- that we've issued
8 a card to --

9 (Phone rings.)

10 MS. SPRIGGS: Can we go off the record
11 for a moment, please?

12 (Discussion was held off the record.)

13 BY MS. SPRIGGS:

14 Q. And just we were off the record and we
15 mentioned -- we were talking about the Pacific
16 Pride card.

17 And you -- could a customer use that card
18 at, say, a Walmart?

19 A. No.

20 Q. So it's not a credit card in that sense?

21 A. Correct.

22 Q. Okay. When J.J. Powell is selling the
23 fuel to customers, where does J.J. Powell get its
24 fuel?

25 A. We procure fuel from pipeline terminals.

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1 Q. Okay. And how do you -- and you pay for
2 that?

3 A. Correct.

4 Q. And are you charged tax, excise tax, on
5 that, those purchases?

6 A. We are.

7 Q. And you pay that?

8 A. We do.

9 Q. Okay. And then how do you account for --
10 see -- or if you know, how does J.J. Powell account
11 for that tax when you pay for it on your books and
12 records?

13 A. So there's a general ledger account which
14 shows prepaid federal excise tax.

15 Q. So you have a general ledger and it's
16 prepaid excise?

17 A. Mm-hmm.

18 Q. And does that show up on your income
19 statement as an expense?

20 A. No.

21 Q. So it's not an operating expense?

22 A. No.

23 Q. What about your cost of goods sold? Is
24 it a cost of goods sold?

25 A. Yes, it would have to be.

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1 But I'm not the accountant, so maybe I
2 should say I don't know how we would account for
3 that.

4 Q. So you're not sure if it was an operating
5 expense?

6 A. I'm not positive.

7 Q. So are you sure about the general ledger
8 that it was treated as a prepaid excise tax?

9 A. Yeah.

10 (Powell Deposition Exhibit No. 2 was
11 marked for identification.)

12 BY MS. SPRIGGS:

13 Q. Are you familiar with this document?

14 A. I am.

15 Q. And could you explain what it is?

16 A. That is a list of tax exempt customers.

17 Q. Is this all of the tax exempt?

18 A. I can't be sure that it's all of them,
19 but it looks like a pretty thorough list.

20 Q. And it would include the customers who
21 purchased diesel and gasoline?

22 A. It would.

23 Q. And there are two columns. One says --
24 on this form it says Certificate on Hand For Audit
25 Period.

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1 Could you explain that column?

2 A. No. I probably can, but I don't know
3 where this document came from.

4 Q. Okay. You didn't prepare it?

5 A. I did not prepare that, no.

6 Q. Okay. It wasn't prepared at J.J. Powell?

7 A. Not that I'm aware of.

8 Q. Okay. So you wouldn't know some of
9 the -- for example, the Bellefonte School District,
10 there's no check where it says Certificate on Hand
11 For Audit Period.

12 So you wouldn't know anything about that,
13 or would you?

14 A. I don't.

15 Q. Okay. Going back to the fueling stations
16 and the customers who come to use their cardlock
17 card, could you explain for the tax exempt
18 customers how you set their price when they go to
19 the card to use their cardlock system?

20 Do you have something at the actual pump
21 that would determine their price?

22 A. No.

23 Q. Okay. So when they go to the pump, what
24 is happening? Is it just --

25 A. They see the number of gallons they pump.

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1 They're mechanical pumps that do not
2 include pricing.

3 Q. So nothing happens at the pump except --
4 for the cardlock system except you get the gallons
5 of gas?

6 A. Correct.

7 Q. So the pricing for the cardlock system is
8 all done at J.J. Powell?

9 A. Correct.

10 Q. Okay. So explain to me how that happens.
11 You get information from the cardlock
12 stations?

13 A. We do. We pull that information every
14 night.

15 The price is determined prior to the sale
16 at J.J. Powell.

17 Q. When you say "the price is determined
18 prior to the sale," what does that mean?

19 A. Typically, we take a price survey on
20 Fridays, review the competitive prices.

21 Q. So what is a price -- when you say "price
22 survey"?

23 A. It's a list of competitors in the area
24 near the cardlock sites that includes their prices
25 for gas and diesel fuel.

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1 Q. So how do you get those prices?

2 A. Competitors are typically truck stops,
3 other gas stations; so it's as simple as driving
4 around and looking.

5 Q. So you get the competitors' prices.

6 And then what?

7 A. Then we see what our costs are and we try
8 to be somewhere at or near the competitive prices.

9 Q. Now, this is for all of your customers or
10 just for taxable customers?

11 A. All customers. Well, as we look at the
12 competitive prices, those prices include tax.

13 Q. Okay. So you would look at these prices
14 and determine a price for your taxable customers?

15 A. Correct.

16 Q. Then for your nontaxable customers, what
17 would you do to determine the price?

18 A. We don't do anything. We just -- the
19 computer is set up to not charge those customers
20 taxes.

21 So we charge the same price for the fuel,
22 but the taxable customers also pay the amount of
23 the tax, where the nontaxable customers pay only
24 for the fuel.

25 Q. Okay. Walk me through that, because you

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1 just said you have a price for a taxable person, a
2 taxable customer.

3 A. Yeah.

4 Q. And that price you determine, use your
5 market survey, for the competitors in the area.

6 You came up with a price, and you said
7 that price was going to include tax?

8 A. Correct.

9 You want me to walk you through it from
10 there?

11 Q. Well, then I want to go to your
12 nontaxable, first, customer.

13 A. Mm-hmm.

14 Q. You're going to -- you said you compute
15 their price the, say, end of the month. You're
16 going to get all of their gallons of gas pumped
17 from a cardlock station.

18 Then you're going to, you said, use the
19 same price because you said you use the same price
20 that you've determined.

21 A. Correct.

22 We start out with -- let's assume that
23 the competitive price is \$3. So we know that we're
24 going to set our price at \$3 for taxable customers.

25 So for nontaxable customers let's assume

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1 that the taxes, the federal and state taxes, come
2 to 50 cents. So to get the price for the
3 nontaxable customers, it's \$3 minus 50 cents; so it
4 should be \$2.50.

5 Q. So that's the computation that J.J.
6 Powell would do at the end of the month?

7 A. No. We do it every day.

8 There's tax flags set up, and each
9 transaction knows if the customer is federal
10 taxable, state taxable or a combination of either
11 one; and it only applies the price -- the tax --
12 the price to the transaction if it's warranted.

13 Q. So a daily -- on a daily basis for
14 nontaxable customers, you have like a computer
15 program that is taking the gallons of gas,
16 multiplying it by --

17 A. By -- for the taxable customers, by the
18 price of the fuel plus the taxes.

19 Q. Well, that's just the competitive price.
20 You said --

21 A. But on a daily basis we take -- the
22 taxable customer gets a transaction. The
23 transaction gets pulled in from the site. It gets
24 priced at the price that we had determined earlier
25 that includes both fuel and taxes.

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1 For the nontaxable customer, when that
2 transaction comes in, ten gallons, it multiplies
3 that ten gallons by the price of fuel alone, and it
4 does not add the taxes. So it would be \$2.50
5 instead of \$3 for the taxable customer, because the
6 price of the fuel is really \$2.50. Right?

7 The taxes -- let's call it 50 cents --
8 brings it up to \$3. That's where the competitive
9 survey is taken. They include the taxes.

10 The nontaxable customer pays \$2.50
11 because we don't charge them the taxes.

12 Q. So the \$3 which you said was the
13 competitive price that you had determined, the
14 price of fuel was really \$2.50?

15 A. That's correct.

16 Q. And then you add --

17 A. Then you add the 50 cents for the tax.

18 Q. You add the 50 cents on to that
19 competitive price when you do the -- so your
20 program looks at the actual when you're computing
21 the price for the nontaxable --

22 A. It actually backs off the taxes.

23 We put the price in as \$3, and it backs
24 off the taxes.

25 Q. And then it will show the price of the

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1 fuel without any tax?

2 A. Correct.

3 Q. Okay. So the way that you have explained
4 the pricing of the fuel is a market based approach?

5 A. Yes.

6 Q. But I've seen some -- how does -- let me
7 rephrase.

8 When you are bidding for some of the tax
9 exempt government entities, do you bid sometimes on
10 a cost plus a profit margin basis?

11 A. We do.

12 Q. So can you explain the different pricing
13 models?

14 A. In what sense?

15 Q. Well, do you use -- do you only use the
16 cost -- when do you use this cost plus profit?

17 A. When there is a bid typically that is a
18 contract bid for some period of years and the --
19 whether it's a school district -- I think in this
20 case we're talking about a school district -- or a
21 borough, they ask for a contractor a period of
22 years, and they specify how they want that product
23 to be priced; and typically they're asked for a
24 cost plus price.

25 Q. So how do you determine the cost in that

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1 scenario when it's a cost plus?

2 A. Typically in those contracts, they will
3 ask to see some of our wholesale prices without tax
4 and they'll ask us to show them the price that we
5 pay for fuel at any point in time during the
6 contract just to make sure that we're using the
7 correct price. And they also ask that we -- well,
8 they don't ask. They demand that we do not charge
9 them taxes on those transactions.

10 Q. What costs go into making up the costs
11 that you would submit?

12 A. The cost of the fuel or the cost plus?

13 Q. Well, is it -- yeah. When you're looking
14 at the cost, is it just the cost of the fuel?

15 A. Right.

16 Q. It's just the cost of the fuel?

17 MR. VAN HOOK: Can we go off the record a
18 second?

19 MS. SPRIGGS: Sure.

20 (Discussion was held off the record.)

21 BY MR. VAN HOOK:

22 Q. We were discussing what costs go into
23 what you would submit in a bid to one of the
24 entities?

25 A. Yes. So it's the cost of the fuel only.

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1 On the invoice it would be the cost minus
2 the taxes. It is typical for a petroleum company
3 to look at the cost of fuel only without taxes to
4 determine pricing.

5 Q. And for the cost plus percentage profit,
6 so what does that percentage profit include?

7 A. That includes our operating costs plus
8 any profit that we hope to make.

9 Q. And what kind of operating costs would be
10 included?

11 A. Transportation, electricity, maintenance,
12 credit carrying costs, property taxes, utilities.

13 Q. Are you familiar with a document called a
14 product ranking report?

15 A. I am.

16 Q. Could you explain what that is?

17 A. That is a document that shows costs that
18 may or may not include taxes from our suppliers.

19 Q. And what do you use that document for?

20 A. To review pricing and also at times to
21 price the contracts for school district bids that
22 we just talked about.

23 Q. And how would you use it in that --

24 A. If that school district has requested a
25 cost plus contract pricing methodology, that

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1 product ranking report would be used to determine
2 the cost of the fuel.

3 Q. How would that -- how would the product
4 ranking report determine the cost for J.J. Powell?

5 You said you would use it for the bid.

6 So you would use that as J.J. Powell's
7 cost?

8 A. Right. That's the cost from our
9 suppliers to us.

10 Q. Oh, from your suppliers?

11 A. Yeah.

12 Q. And is there any difference when you're
13 setting the price for diesel fuel and gasoline? Do
14 you use the same methodology?

15 A. The methodology is the same. The taxes
16 are different.

17 Q. So it's just a matter of backing out a
18 different tax?

19 A. Exactly right.

20 Q. Or identifying a different tax?

21 A. Right. Yeah.

22 Q. Now, the customer that has the cardlock
23 system, that has the cardlock card, I just want to
24 make sure I understand.

25 They could not go to -- they have to go

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1 to a cardlock site?

2 A. A Pacific Pride site, yes.

3 Q. What happens if one of your exempt
4 customers -- so they can't go to a retail?

5 A. No, they can't.

6 Q. They cannot? Okay.

7 And how -- you said that when your tax
8 exempt customers go to the cardlock system, they're
9 flagged or there's a way that they're flagged for
10 taxes.

11 How are they identified?

12 A. How are who -- when you say "they," who?

13 Q. The tax exempt customers.

14 A. Identified?

15 Q. Yeah, how are they identified?

16 A. The accounts of -- when the fuel cards
17 get set up, that account is identified as either a
18 taxable or nontaxable account.

19 There are a number of different tax flags
20 set, including federal taxes and state taxes, and
21 there are yes/no flags that are set to determine
22 whether a customer should or should not be taxed.

23 Q. Going back to the Pacific Pride card and
24 Pacific Pride, does Pacific Pride have a
25 relationship with any of the other -- like any

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1 other credit card issuer?

2 A. When you say "credit card," do you also
3 mean a fueling network card, or do you mean a
4 credit card that can be used at a Walmart?

5 Q. Well, for example, there was a reference
6 to something called AmeriNet on one of the
7 applications for the J.J. Powell card.

8 A. Mm-hmm. Yes, they do have a -- there are
9 more -- at a Pacific Pride site, there's a Pacific
10 Pride card that can be accepted.

11 AmeriNet is another card that Pacific
12 Pride issues, and the AmeriNet card was designed
13 more for truck stop type of businesses, but the
14 AmeriNet card can also be used at a Pacific Pride
15 site.

16 We do not issue AmeriNet cards. We only
17 issue Pacific Pride cards.

18 Q. So your card has no relationship with
19 AmeriNet or -- there's another card -- any other
20 credit card?

21 A. Right.

22 Q. On the application for the J.J. Powell
23 card, there's a reference to purchasers and
24 guarantors.

25 Do you know who the guarantors are?

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1 A. I'm assuming that's in the credit
2 section, and a guarantor may be someone who is also
3 willing to pay for that fuel. I'm not sure without
4 seeing the document.

5 Q. Okay. The other card that I was going to
6 ask you about is Wright Express.

7 Is that related to Pacific Pride at all?

8 A. It may be related to Pacific Pride, but
9 we do not issue Wright Express cards and I don't
10 know what the relationship is between Wright
11 Express and Pac Pride.

12 Q. For your tax exempt customers, do they
13 all have a Pacific Pride card?

14 A. For the tax exempt customers that buy
15 fuel at Pacific Pride or you're talking about any
16 tax exempt customer?

17 Q. Well, I guess my question is: Do all the
18 tax exempts have to use the cardlock system and so
19 have to have a Pacific Pride card? Is that how you
20 handle all the tax exempt?

21 A. No. We also deliver some fuel out of a
22 truck to tax exempt customers.

23 Q. And is there a distinction between which
24 ones you deliver with a truck and --

25 A. There is in that -- only in that the ones

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1 that we deliver to in a truck may or may not also
2 have Pacific Pride cards.

3 But they typically would have their own
4 tank. Let's say -- I think Morris Township Road
5 District is a customer who we delivered nontaxable
6 fuel to during the periods in question, and they
7 have a tank at their facility that we go and fill
8 and they then fuel their own vehicles.

9 Q. And how does that work when you deliver
10 in a truck? How do you price that fuel?

11 A. That fuel gets priced at the cost minus
12 the taxes plus the operating expenses and profit
13 margin that we hope to obtain.

14 Q. Okay. You have to explain that.

15 So the price you said is going to be the
16 cost minus taxes plus -- so it's a cost plus?

17 A. It's -- we determine that -- we typically
18 determine that price every Friday. We set that
19 price based on the cost of the fuel without the
20 taxes included.

21 So again, if we're talking about that \$3
22 fuel at retail and the actual cost of the fuel is
23 \$2.50 without the tax, we start at the \$2.50 and
24 then add some number to get to the price that we're
25 going to charge that nontaxable customer.

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1 Q. You said you start with the cost and add
2 something?

3 A. We start with the cost of the fuel and
4 back out the tax that we've already paid.

5 Q. Okay.

6 A. So we prepaid that federal excise tax at
7 the rack, and now we add our operating expenses and
8 profit margin on to that number that does not
9 include the tax.

10 Q. And what is the -- you said the cost of
11 fuel.

12 That's going to be the cost from your
13 suppliers?

14 A. The cost from our suppliers.

15 Q. So that's the cost that you paid or J.J.
16 Powell paid, which included tax?

17 A. Which included tax.

18 Q. Then you're saying you back out the tax?

19 A. Once we back out the tax. We only back
20 out the tax once.

21 Q. Well, you said we start with cost of the
22 fuel, which I'm assuming would include tax.

23 A. Right. Then we back out that tax to get
24 to the net cost of just the fuel alone. Then we
25 add on the operating expenses, profit margin.

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1 Q. So what does that tax exempt customer,
2 what does their bill look like?

3 A. You mind if I look at a document here and
4 I can do a better job of explaining it?

5 Q. Okay.

6 A. (Looking on computer.)

7 A customer's invoice, for example, would
8 say, "Fuel meets federal and state requirements for
9 on highway motor vehicle use, 15 parts per million
10 sulfur and ultra low sulfur diesel, 96.8 gallons at
11 2.679."

12 Q. So I don't think I've seen an invoice
13 like this.

14 A. No, you haven't seen these. I pulled a
15 bunch of these yesterday just to show you.

16 This is a very small portion of the
17 nontaxable sales.

18 Q. So can I -- what I'll do is I'll just
19 take this information down, and then maybe if you
20 could provide a copy, so -- because I haven't seen
21 this before.

22 So this is the client is --

23 A. The client is Pleasant Gap Fire Company.

24 Q. And it is what date? Is there a date on
25 there?

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1 A. Yeah, November 5th, 2010.

2 Q. November 5th, 2010 invoice.

3 A. You want the invoice number?

4 507034.

5 Q. Invoice 507034.

6 So what we have is, this is on a
7 computer, a laptop, and this is an invoice for a
8 truck delivery from J.J. Powell to Pleasant Gap
9 Fire Company, and it's an invoice dated 11/5/2010
10 and it's Invoice Number 507034.

11 And we'll get a copy of this after the
12 deposition.

13 A. Sure.

14 Q. And this shows -- maybe you can walk us
15 through this again. It shows --

16 A. It shows an invoice for on road, on
17 highway motor vehicle fuel that meets the 15 parts
18 per million sulfur standard, 96.8 gallons at a
19 price of \$2.679, for a total of \$259.33.

20 Q. So the tax exempt only sees -- they see
21 the gallons and then they see a price.

22 So they don't see the behind -- how you
23 developed that price?

24 A. Right.

25 Q. Now, for the fuel that's being purchased

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1 here, which is?

2 A. Diesel fuel.

3 Q. Is diesel fuel.

4 So that \$2.69 price, if you have another
5 tax exempt who is purchasing it using a fuel lock
6 card, are they going to get that same price?

7 A. No.

8 Q. Could you explain the difference?

9 A. There are different costs associated with
10 the delivery of fuel as opposed to the cardlock
11 delivery of fuel.

12 There are different market variances also
13 because we're competing with a different, totally
14 different, segment of the market in delivering
15 small truckloads of fuel as opposed to the
16 cardlock's competitors are typically truck stops,
17 gas stations, that kind of thing.

18 Q. So is the price -- do they pay a premium
19 for getting the delivery or how does it -- or can
20 you say?

21 A. It can go -- it can be either way. There
22 can be times when our profit margin on the delivery
23 of fuel is better, and there are times when the
24 delivery through a cardlock is better.

25 And why that is or isn't, I can't really

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1 explain.

2 Q. So we're looking at the total price here
3 on the invoice for Pleasant Gap Fire Company, the
4 2.69.

5 If we were just looking at the actual --
6 when I say the actual price, if we were not looking
7 at -- you said you added on the operating expenses
8 and profit margin.

9 So if you were to go back and we just
10 looked at the cost of that fuel minus the taxes,
11 then would the price for the fuel for the cardlock
12 customer, tax exempt customer, and the delivery
13 customer be the same?

14 A. Yes.

15 Q. Okay. You said you pulled up some other
16 invoices today.

17 What other kinds of invoices were you
18 able to pull up?

19 A. More tax exempt transactions. I wish I
20 would have brought some taxable transactions too
21 now. But just other tax exempt transactions for
22 the fourth quarter of 2010.

23 So when Bob gets to the 8849, there
24 should be significant coverage of what he has.

25 Q. Okay. Did you get involved at all with

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1 the -- with maintaining the exempt certificates
2 that the tax exempt entities provided to J.J.
3 Powell?

4 A. I know of the maintaining them. I wasn't
5 physically involved in the process.

6 Q. Who was involved in that process?

7 A. At that time Angie Cuthbert was.

8 Q. And what was her job?

9 A. She was the fuel truck dispatcher.

10 Q. So to your knowledge was there any
11 procedure for following -- sort of reviewing the
12 exempt certificates?

13 A. There was.

14 Q. What was the procedure?

15 A. To review the exemption certificates on
16 an annual basis and get the updated certificates
17 that we needed.

18 Q. And when did this procedure start?

19 A. I don't know that.

20 Q. And who was -- was Angie Cuthbert the
21 person who was in charge of this procedure?

22 A. It was -- she was.

23 Q. And was there anyone who reviewed what
24 she did?

25 A. No.

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1 Q. Okay. Did you have an outside -- did
2 J.J. Powell have an outside accountant?

3 A. No.

4 Q. So all of your accounting was internal?

5 A. Yes.

6 Q. So who was in charge of the internal
7 accounting?

8 A. Doug Goss was our comptroller.

9 Q. Do you know if he got involved at all
10 with reviewing the exempt certificates?

11 A. Not that I'm aware of.

12 Q. So to your knowledge were any -- were
13 there any accountants that were asked opinions
14 about the exempt certificates and whether they were
15 valid?

16 A. No.

17 Q. Were there any discussions at J.J. Powell
18 about the exempt certificates for the entities and
19 whether they were valid?

20 A. No.

21 Q. At J.J. Powell were you aware that the
22 exempt certificates were -- there were requirements
23 for maintaining the exempt certificates?

24 A. We were.

25 Q. But there was no -- so you said there was

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1 an annual review of the certificates?

2 A. Right.

3 Q. And then what was done at the annual
4 review?

5 A. We would review the certificates. And if
6 they were going to expire during the year, then we
7 would get an updated certificate.

8 Q. Okay. Now, when a client -- when you had
9 a tax exempt customer and you -- they wanted to use
10 your fuel lock system, how did you coordinate the
11 exempt certificate and the fuel lock card?

12 A. So if that exempt customer applied for
13 fuel cards, we would immediately send them the
14 exemption certificates required or they would --
15 oftentimes they would just include them because
16 that's typical standard. And so prior to issuing
17 the cards we would have a certificate on file.

18 Q. And did someone verify that that was
19 actually the case, that there was a certificate on
20 file before they gave them a fuel card?

21 A. As far as I know, yeah.

22 Q. Were there instances where tax exempts
23 were using fuel cards, J.J. Powell's fuel cards,
24 and they did not have a valid certificate on file?

25 A. No.

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1 Q. Did the exempt certificates that were
2 provided to J.J. Powell, did they indicate what
3 kind of fuel the tax exempt was purchasing?

4 A. I don't know that.

5 Q. Are you aware that many of the exempt
6 certificates that were submitted in this case for
7 the tax exempts purchased fuel from J.J. Powell,
8 many of them were signed by the tax exempt entity
9 after the beginning of the contract?

10 A. There were lots -- yeah, there were lots
11 of contracts that continued on and on, and those
12 exemption certificates, as long as they were within
13 three years, one could start -- there could be an
14 exemption certificate that existed prior to the
15 beginning of the contract; and as we went through
16 the contract, there would be another one to take
17 that one's place.

18 Q. Would you keep them together, because
19 what I have are just like the single page -- well,
20 I have a beginning date, an end date and then a
21 signature somewhere in the middle but nothing
22 behind it to show the history?

23 A. We should -- I assume we have them. I
24 don't know for sure --

25 Q. Okay.

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1 A. -- if we keep the old certificates.

2 Q. You said that when you did the -- when
3 you had the annual review of the certificates, I
4 think you mentioned something about if the
5 certificates are getting ready to expire you ask
6 for new -- when you say "expire," what do you mean?

7 A. The certificates are good for three
8 years. So if that certificate is going to expire
9 in the current calendar year, then we ask for a new
10 certificate.

11 Q. Why do you think that they expire in
12 three years? Where does --

13 A. There's a Treasury Code, I think, that
14 says that.

15 Q. And was there -- since earlier you said
16 you didn't talk to an accountant about this, who
17 would have advised you of this?

18 A. The Pennsylvania Petroleum Association.
19 And I think also from -- just from experience, we
20 had used those certificates and been audited many
21 times before.

22 Q. So you said the Pennsylvania Petroleum
23 Association provided you --

24 A. No, they didn't provide us with
25 certificates.

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1 Q. No, with information.

2 A. The Pennsylvania Petroleum Association
3 does provide us with information on a regular
4 basis, with newsletters and that kind of thing,
5 yeah, that specifically talk about tax
6 requirements, nontaxable requirements, that kind of
7 thing.

8 Q. But the three-year requirement, that's
9 J.J. Powell's -- that was J.J. Powell's -- that was
10 part of their review process? They would be using
11 the three years as some sort of expiration date?

12 A. Yeah. And I think it even said that on
13 the certificate.

14 Q. Okay. So if three years was not the
15 correct date, then what would that mean for the
16 certificates that you have?

17 A. That would mean that they're not good.

18 Q. Okay. And there was never -- was there
19 any discussion at J.J. Powell about whether three
20 years was the correct --

21 A. No.

22 Q. -- time period for the certificates?

23 MS. SPRIGGS: Let's go off the record.

24 (Recess taken from 10:48 a.m. to 10:59
25 a.m.)

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1 (Powell Deposition Exhibit No. 3 was
2 marked for identification.)

3 BY MS. SPRIGGS:

4 Q. This is a document dated August 29th,
5 2014, and it's Plaintiff's response to some
6 informal discovery requests by the government.

7 Take a look at that document.

8 MR. VAN HOOK: He's looking at the
9 letter. He's not looking at the response.

10 MS. SPRIGGS: Oh, okay.

11 BY MS. SPRIGGS:

12 Q. Well, let me rephrase. Exhibit 3 then
13 will be the letter to Plaintiff's Counsel.

14 The main thing I wanted you to look at
15 actually are the documents that are attached to the
16 letter. And there are a series of exhibits.

17 Could you take a look at those exhibits?

18 A. Sure. (Complying.) Mm-hmm.

19 What can I tell you about them?

20 Q. So are you familiar with the documents?

21 A. Yeah.

22 Q. I only have one copy, so I have to -- so
23 Exhibit 1, could you just explain what that is?

A. This is September 2009 exempt gas sales through cardlock. Bob Hummel had prepared this.

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1 And these are the exact gallons that have
2 been sold through our cardlock facilities.

3 Q. So when we were talking about the
4 computation J.J. Powell would do for the cardlock
5 system, is this a part of it, part of that kind of
6 computation for the price?

7 A. No.

8 Q. Okay. This is just the gallons?

9 A. This is just the gallons used to help
10 prepare the 8849 and the state returns.

11 Q. Okay. And so when it says Schedule 10
12 there and there's some check marks, what does that
13 mean?

14 A. I'll have to let Bob Hummel answer that
15 specifically, what Schedule 9 and Schedule 10 are.

16 Q. And who would have prepared this?

17 A. Bob Hummel.

18 Q. And attached is Exhibit 2?

19 A. Mm-hmm.

20 Q. Could you explain what that document is?

21 A. Be happy to.

22 This is the most raw form of the
23 transactions. This is just after the transactions
24 have been pulled on a daily basis and they have
25 come into the computer where they all get priced

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1 and prepared to be sent out on the invoice to all
2 of our customers.

3 And this shows the tax exempt flags that
4 we have discussed before, the selling price, the
5 approximate cost of the fuel. It includes the
6 date, the time, the customer, the product based on
7 these product codes. 25 matches off road diesel
8 fuel. 45 would be an on road diesel fuel product.

9 And you can see the -- there's a
10 nontaxable and a taxable sale there together, the
11 45, with the price difference being -- what's that
12 come to -- 62 and a half cents, which is the amount
13 of the difference in the amount of the tax.

14 Q. Could we go through that?

15 A. Yeah.

16 Q. You're looking at -- on Exhibit 2, you're
17 looking at -- what is it?

18 A. That's the Centre County Transportation
19 Authority, I believe, is the official name of that,
20 but it's Centre County Office of Transportation.

21 Q. And they purchase what product?

22 A. They purchase Product 45. Here. This is
23 not easy to read, but Product 45, which is on road
24 diesel fuel, ultra low sulfur diesel fuel.

25 And Robinson Septic also purchased on

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1 road diesel fuel.

2 Q. And Robinson, is that the taxable --

3 A. They are taxable, yes. And the tax flags
4 over here correspond with our tax flags. There are
5 six tax flags and diesel fuel. Federal excise is
6 first, state excise, state excise, county, city and
7 state sales tax.

8 Q. So the Y's mean --

9 A. So the Y's mean yes.

10 Q. -- yes, they are taxable?

11 A. Yes, they are taxable.

12 So there's actually two yeses on this
13 Centre County. But they're the county and city,
14 and those tax rates are zero; so it doesn't mean
15 anything.

16 And on Robinson Septic, they have yeses
17 for all of them except sales tax, and diesel fuel
18 is not sales taxable in Pennsylvania.

19 Q. Okay.

20 A. And so the total of these applicable
21 taxes are 62.5 cents, and that's the difference in
22 price between Centre County and Robinson, the 2.859
23 minus 2.235.

24 Q. So the unit -- the unit price is showing
25 the unit price that they would pay?

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1 A. Yeah. And on -- we had supplied you with
2 some customer invoices so we could go back and look
3 at Centre County Transportation Authority.

4 When they get their invoice, we could
5 look at that specific day, time and location and
6 see that that transaction, September 1st, 2009,
7 would be right there. (Looking on computer.)

8 I don't have Centre County Transportation
9 Authority. That's perfect. Let me find another
10 one here. I would be happy to show you that.

11 Q. I think I understand.

12 MR. VAN HOOK: We'll just look at one
13 that's --

14 THE WITNESS: Can I just -- so their
15 invoice, when they get an invoice every two weeks,
16 it looks like this. (Indicating.)

17 So this is for Bellefonte Borough and it
18 shows each one of these transactions, but it breaks
19 them out by each card. That would be the card
20 number that's listed right there, and now it will
21 show which site that card was used at, the time,
22 the date, the odometer, miles per gallon, product,
23 no tax on the price 2.234 on that day, 1/4/2010.

24 BY MS. SPRIGGS:

25 Q. So you are looking at an individual --

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1 A. Yes.

2 Q. Let me just jot this down.

3 So this is an individual invoice for?

4 A. Bellefonte Borough. I think we had
5 supplied these to you.

6 Q. Bellefonte Borough?

7 A. Mm-hmm.

8 Q. And it's for June 3?

9 A. This is for --

10 Q. 1/31/10?

11 A. 1/31/10. Invoice 010456- -- I'm sorry --
12 1003101.

13 Q. Okay. If you could look at Exhibit 2 to
14 this attached to the letter of August -- what is
15 that? August 1st, 2014?

16 A. August 1st, 2014.

17 Q. And could you explain what that document
18 is?

19 A. That is the edit print transactions.

20 Each night the computer system calls --
21 our fueling, cardlock fueling, computer calls out
22 to the unattended sites and pulls in the
23 transactions to the main cardlock fueling computer,
24 and it gathers all the transactions, prices them
25 and distributes them to the accounts that they

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1 belong to.

2 It shows the customer, the driver, the
3 vehicle, the transaction date, the time, the
4 product, unit cost, the unit price, tax flags,
5 quantity, total of the sale and each site there
6 where the fuel had been purchased.

7 Q. Can I take a look?

8 A. Sure.

9 Q. (Reviewing document.)

10 For something like U.S. Fish, which is on
11 Exhibit 2, is that a federal -- is that a tax
12 exempt?

13 A. It is a tax exempt sale. The flag's
14 there.

15 Q. So it says no.

16 So that means no tax?

17 A. No tax.

18 Q. But there's yes to something?

19 A. There's yes to city and local tax, but
20 those tax rates are zero; so in effect there's no
21 tax applied.

22 Q. So their -- U.S. Fish and I guess
23 Wildlife is purchasing what?

24 A. They are purchasing Product 25, which is
25 off road diesel fuel, which is nontaxable. It's a

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1 nontaxable product, so there's nothing being taxed
2 on no matter what.

3 Q. Okay. Down here it shows Powell, Inc.?

4 A. Yeah. That's -- we're buying our own --
5 our trucks fuel there too.

6 So when our trucks go there and fuel, we
7 don't charge ourselves for our fuel.

8 Q. Okay. Well, what is this price you have
9 a price here.

10 A. That's an estimated cost of that product,
11 but we don't charge ourselves.

12 Q. Okay. And Powell, Inc. is?

13 A. J.J. Powell, Inc.

14 Q. Oh, it's J.J. Powell?

15 A. Yeah.

16 Q. Up here it says buying host.

17 A. Mm-hmm.

18 Q. What does that mean?

19 A. That's those transactions where, let's
20 say, Christoff Mitchell is another Pacific Pride
21 franchisee. They may have issued a card to a
22 customer who then used it at our site that day, and
23 so that would be their customer.

24 That's just -- it shows what other
25 company's customers have purchased fuel at our

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1 site.

2 Q. Okay. Now, this Beavertown, so that's
3 not -- that's taxed?

4 A. That is taxable.

5 Q. That is taxable?

6 A. Yes. And the last flag is a no for PA
7 sales tax, and fuel is not PA sales taxable.

8 Q. And Exhibit 5.

9 A. This is another report that's produced by
10 Bob Hummel in preparation of his 8849s. That's
11 exempt diesel sales through the cardlock, and it's
12 a list of the exempt entities and the number of
13 gallons that they purchased.

14 And again, I don't know exactly what
15 Schedule 9 and Schedule 10 are.

16 Q. Okay. And Exhibit 6 says Customer
17 Federal Excise Report.

18 A. Yes. This is also a report that Bob uses
19 in preparation for the 8849.

20 He runs a report both for gas and diesel,
21 and these are cardlock transactions and on -- in
22 the sums, the number of gallons they've purchased
23 for the period specified in the report -- in this
24 instance it happens to be August of 2009, and it
25 shows a Patton Township -- I'm sorry -- Alpha Fire

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1 Department located in Patton Township that had
2 purchased Product 45 on road diesel fuel. They
3 purchased 119.55 gallons, multiplied by the federal
4 excise tax rate of 24.3.

5 That shows that there's \$29.05 that Bob
6 will eventually apply for a refund on the 88.49.

7 Q. How does that relate to the -- can I see
8 that for a second? So you have a quantity --

9 (Phone rings.)

10 MS. SPRIGGS: We'll go off the record for
11 a moment.

12 (Discussion was held off the record.)

13 THE WITNESS: So the 119.55 is the number
14 of gallons that that exempt customer purchased for
15 that month, and Bob then sums all these over here
16 on his report for the exempt diesel sales through
17 the cardlock.

18 BY MS. SPRIGGS:

19 Q. Oh, okay. So quantity. And this -- the
20 2905?

21 A. Is just the 119 multiplied by the federal
22 excise tax rate.

23 MR. VAN HOOK: Which you've already paid
24 and you're going to get back again. I'm sorry.

25 BY MS. SPRIGGS:

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1 Q. But the fire department, they were
2 charged -- how does this -- so you're saying that
3 the fire department was not charged this tax?

4 A. Right.

5 Q. So you're just multiplying that amount by
6 the gallons?

7 A. Yes, exactly.

8 Q. Exhibit 7, I'm not sure. I think I had
9 asked about this, the top, because there's no
10 identifier on that one.

11 THE WITNESS: Is that exempt federal or
12 exempt --

13 BY MS. SPRIGGS:

14 Q. If you don't know, we will --

15 A. I'm going to suggest asking Bob because
16 he will.

17 Q. Exhibit 8, I think I had asked you about
18 this earlier. I guess this is the product ranking
19 report.

20 A. It is. It's a product ranking report.

21 At least daily we get price changes from
22 suppliers. Bob Hummel also produces this report,
23 and it just shows the cost without tax. So this is
24 backing out the tax, cost minus the tax, from all
25 of our suppliers for a number of different products

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¹ that we can purchase.

2 So a 500 part per million low sulfur
3 nontaxable off road in locomotive fuel of 15 parts
4 per million, ultra low sulfur diesel nontaxable
5 fuel, just keep -- 15 parts per million ultra low
6 sulfur diesel, which would be a taxable fuel. But
7 again, this is product cost without any taxes
8 included in this report, and it's just for our
9 reference to see what we're paying to be able to
10 determine the pricing for both nontaxable and
11 taxable customers based on the product cost.

12 And then for the taxable customers, we
13 would add the tax in. For the nontaxable, we would
14 not add tax.

15 Q. Okay. And Exhibit 9, are you familiar
16 with this?

17 It says third quarter, 2009 federal
18 exempt diesel.

19 A. Yep. This is another report that Bob
20 Hummel produces, and he used that in preparation
21 for his 8849.

22 It includes the fuel management or the
23 cardlock sales, and it lists each individual entity
24 that had exempt sales and the number of gallons
25 that they purchased by month. And it also shows

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1 these delivered gallons that were delivered off a
2 truck to the locations owned by the exempt
3 entities.

4 Q. So the fuel management?

5 A. Means the same as cardlock.

6 So these will match up to the report, the
7 other two reports that are in here, both -- so
8 this -- so they would match up to this report and
9 also to the 119.55, which was the fire department.
10 which fire department was that? Alpha Fire
11 Department.

12 The 119.55 for August matches up to
13 119.55 for August for Alpha Fire Department.

14 Q. Okay. If you could mark this as Exhibit
15 4.

16 (Powell Deposition Exhibit No. 4 was
17 marked for identification.)

18 BY MS. SPRIGGS:

19 Q. And this is the motor fuel price survey.

20 And are you familiar with this?

21 Well, it's a part of it, a page of it.

22 A. I am familiar with this.

23 Q. Could you explain what that is?

24 A. This is a price survey that we typically
25 take on a weekly basis that helps us determine the

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1 prices that we would like to set for the cardlock
2 transactions.

3 Q. And why did you -- is it just for
4 cardlock?

5 A. We do only use this for cardlock.

6 Q. And why?

7 A. Because it's a survey of other
8 competitors to the cardlock fueling system.

9 It's got truck stops and other places
10 that typically sell diesel fuel and gasoline to --
11 in a method that is similar to the cardlock.

12 So people are coming and putting the gas
13 in their vehicle at all these locations.

14 Q. So it gives the name of the entity and
15 then it shows -- for example, it says Snappy's
16 State College.

17 But isn't that J.J. Powell?

18 A. It is. But Snappy's is -- I guess could
19 also be considered a competitor of a cardlock site
20 because there are some commercial customers that
21 might have a Wright Express card that you mentioned
22 before that is a competitor to the Pacific Pride
23 facility, and that Wright Express card can be used
24 at a retail location, a Snappy's or a gas station,
25 that kind of thing.

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1 So these are all places that compete with
2 the cardlock facilities, and so we take the survey
3 and try to set our price accordingly.

4 Q. So you have handwritten -- these are
5 prices that you determine just from going around?

6 A. Mm-hmm.

7 Q. And then you have something that says our
8 price. You have a price column and you have our
9 price.

10 A. And price change too.

11 So each week we -- Cathy Herman, a girl
12 in our office, fills out the price of the
13 competitors. She writes in what our prices are at
14 our nearest card locks, and then my brother
15 typically changes -- what we're going to change our
16 price to, he writes in this last column to reset
17 our price for the week going forward.

18 Q. And so what is the process for changing
19 the price?

20 A. Just comparing our price to the
21 competitors, and we also look at which way fuel
22 price is changing. Do we expect it to go up? Do
23 we expect it to go down? And just kind of make an
24 educated guess as to what's the best thing to do
25 for the following week.

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1 Q. So that's a price per gallon that you
2 have when you go around to the --

3 A. Right.

4 Q. Okay. So --

5 A. And these prices all include taxes.

6 Q. Yeah.

7 A. And then if it's a tax exempt, that's
8 when they have the nos on there, then the computer
9 backs out those taxes, the 62 and a half cents or
10 the 52 cents on gasoline.

11 So a tax exempt customer buying in
12 cardlock isn't going to pay 2.99 for diesel.

13 They're going to pay 62 and a half cents less.

14 Q. Okay. So you have two -- you explained
15 two different methodologies for pricing today
16 because you mentioned the -- you use the market
17 survey. That's one?

18 A. Which is this. (Indicating.) Right? Or
19 no?

20 Q. Well, I thought you were talking about
21 the product ranking.

22 A. Oh, the product ranking report. Yeah.
23 Okay.

24 Q. Is that a different?

25 A. Yeah. The product ranking report

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1 shows -- we use that more for the fuel that we
2 deliver with trucks.

3 Q. Okay.

4 A. This is what we use to price the -- this
5 motor fuel price survey is what we use to price the
6 cardlock sites.

7 The fuel that we deliver off the truck is
8 more based off the cost of the fuel, but those
9 prices that competitors charged are not published
10 for deliveries from a truck; so it's a little more
11 standard, probably a little bit more of a standard
12 procedure, where it's typically cost plus and add
13 on.

14 Q. Okay.

15 (Powell Deposition Exhibit No. 5 was
16 marked for identification.)

17 BY MS. SPRIGGS:

18 Q. And are you familiar with this document?

19 A. I am.

20 Q. We talked about it earlier, that it is
21 the application for the fuel lock card.

22 Is that what this is?

23 A. That is correct.

24 Q. And the question I had asked, if you look
25 at Paragraph Number 11, it talks about guarantors.

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1 And I didn't know if that would jog your
2 memory or if there's some specific category of
3 individual that is always a guarantor or --

A. No. I think purchaser and guarantor in
that instance are the same.

6 Q. Okay. And it says -- so the terms of
7 cardlock use, and it says down at the bottom --
8 let's see -- "I have made the above statements for
9 the purpose of obtaining credit."

10 So the credit they're talking about is?

11 A. Is that the money that is owed by the
12 purchaser to J.J. Powell, Incorporated, because
13 they will be billed every two weeks.

14 So they buy their fuel for two weeks, and
15 they don't get an invoice until after the two weeks
16 are over. So they're going to owe us some amount
17 of money.

18 Q. Okay.

19 (Discussion was held off the record.)

20 (Recess taken from 1130 a.m. to 11:42
21 a.m.)

22 MS. SPRIGGS:

23 (Powell Deposition Exhibit No. 6 was
24 marked for identification.)

25 BY MS. SPRIGGS:

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1 Q. Are you familiar with this document?

2 It's called letter of registration.

3 A. Yes.

4 Q. And could you explain what it is?

5 A. I can read what it is. It's an
6 application for registration for certain excise tax
7 transactions has been approved pursuant to the IRC
8 Code 4101, and it shows our UV number.

9 Q. Okay. Were you involved in the request
10 for -- or involved with the application for the
11 registration?

12 A. No.

13 Q. Okay. Did you get involved at all with
14 keeping up with the status of the registration?

15 A. No.

16 Q. And do you know what the registration was
17 for?

18 A. For tax exempt sales.

19 Q. Okay. In what way?

20 A. In -- for selling the fuel to tax exempt
21 entities.

22 Q. Okay. Who would this letter have come
23 to?

24 A. It would have -- likely -- in 1994, I
25 don't know.

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1 Q. Okay. Would you have reviewed it?

2 A. No.

3 Q. You say in 1994 you don't know.

4 Do you know now who it would go to?

5 A. It would likely wind up with Bob Hummel.

6 Q. Because on the second page of this
7 document it's dated September 7th, 2011.

8 So do you know who would have received
9 that letter?

10 A. I would assume Bob Hummel.

11 Q. Okay. Now, going back to the first page
12 of this document, it gives -- it says your
13 registration number. It gives your registration
14 number. That's for J.J. Powell.

15 It says, "Your company is registered as
16 an ultimate vendor of diesel fuel."

17 Do you know what that -- do you know what
18 that means?

19 A. I don't know.

20 Q. Okay. It says, "This allows your company
21 to claim a credit or refund of the federal excise
22 tax on your sale of undyed diesel fuel."

23 What is undyed diesel fuel?

24 A. At that time that would have been fuel
25 that was meant for a nontaxable use -- I'm sorry --

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1 for a taxable use.

2 Undyed would have been taxable at that
3 point. Dyed would have been nontaxable.

4 Q. Okay. Is there an indicator when you
5 sell diesel fuel that lets you know whether it's
6 undyed or not?

7 A. On an invoice you mean or --

8 Q. Well, for example, if you -- this
9 registration says you can claim a refund of federal
10 excise tax on the sale of this particular diesel
11 fuel.

12 A. Mm-hmm.

13 Q. So when you go -- when J.J. Powell
14 applies for a credit or refund, does it have
15 documentation that shows that it was undyed diesel
16 fuel that they're claiming?

17 A. Yes. Yes.

18 Q. And what would that be?

19 A. That would be the description of the
20 product.

21 Q. And that would be on?

22 A. On invoices.

23 Q. It would be on the invoice to the tax
24 exempt?

25 A. To the tax exempt customer, yes.

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1 Q. Okay. And now, the next paragraph says,
2 "A certificate from a farmer or a state or local
3 government must be obtained and must be renewed
4 every 12 months."

5 Are you familiar with that protocol?

6 A. No, I was not.

7 Q. That was 1994.

8 So from 1994 no one ever discussed that
9 the certificates must be renewed every 12 months?

10 A. No, and we have been through many, many
11 audits since 1994.

12 Q. Okay. Did J.J. Powell file any excise
13 tax returns? Do you know?

14 A. We -- at one time I know we did before
15 the excise taxes were moved to the rack. I think
16 at one time the excise taxes we submitted.

17 Q. When was that?

18 A. I don't remember.

19 Q. Do you remember what returns you filed,
20 J.J. Powell filed?

21 A. No, I don't.

22 Q. But currently for the periods in issue in
23 this suit, there were no like Form 720s filed or
24 any excise tax returns filed?

25 A. No. No.

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1 Q. So the second page of this exhibit says,
2 notification of change in registration.

3 Do you know why there was a change in
4 registration?

5 A. No, I do not.

6 Q. Because it says -- it just says something
7 about, "Your previous registration number" -- gives
8 the same number on the first page -- "was issued to
9 conduct tax free transactions." It says, "Is no
10 longer valid and has been reissued due to a change
11 in the Internal Revenue Service numbering system."

12 Do you know what that means?

13 A. Only that the Internal Revenue Service
14 must have changed their numbering system.

15 Q. And are you aware of any time when the
16 registration was suspended for any reason?

17 A. No.

18 Q. I think have an invoice from an entity
19 you talked about earlier. Just want to show you
20 parts of this. I want to take the first and last.

21 (Powell Deposition Exhibit No. 7 was
22 marked for identification.)

23 BY MS. SPRIGGS:

24 Q. And are you familiar with this document?

25 A. I am.

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1 Q. And could you explain what it is?

2 A. This is an invoice for cardlock purchases
3 made by Bellefonte Borough for the period ending
4 July 31, 2009.

5 Q. And so it shows different -- on the first
6 page, is it showing --

7 A. The first page it shows each card number,
8 the name that the Bellefonte Borough has assigned
9 to that card, where the purchases were made, the
10 date, the time, the product, the unit measure,
11 taxable or nontaxable status, quantity, and the
12 price and the extended amount.

13 Q. So the price -- this is for -- so the
14 first --

15 A. The first transaction is no lead, which
16 is unleaded regular gasoline. The price is 2.094.

17 Q. And then what is the amount?

18 A. The amount is 37.69.

19 Q. No. I'm saying in the column.

20 Are we looking at the same --

21 A. (Reviewing document.)

22 Q. We're looking at the same -- let me
23 get -- you're at 3855.

24 So the amount, the 37.69, what is that?

25 A. That is the quantity multiplied by the

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1 **price.**

2 Q. So that's the amount that they would owe?

3 A. Owe, yes.

4 Q. Okay. So then on the last page, what
5 is --

6 A. I can explain that.

7 Q. Okay. It's --

8 A. The prompt pay volume discount?

9 Q. Yeah.

10 A. Okay. So we gave our customers who
11 purchase more volume during the course of the
12 billing period to take a discount on their fuel
13 purchases, so a customer who purchases between 100
14 and 299 gallons during the two-week period or
15 whatever the billing period may be, to take two
16 cents per gallon off this invoice if they pay by
17 September 9th -- I'm sorry -- September 11th of
18 2009.

19 So the more gallons a customer uses, the
20 greater the discount that we give them the
21 opportunity to take if they pay within ten days.

22 Q. Okay. But it's not related at all to --

23 A. Not at all, to taxes.

24 Q. -- to taxes?

25 A. (Indicating negatively.)

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3 BY MS. SPRIGGS:

4 Q. And this is an invoice for -- is it
5 Lezzer Lumber?

6 A. Lezzer Lumber.

Q. And are you familiar with this document?

8 A. I am.

9 Q. And could you explain what it is?

10 A. This is an invoice for Lezzer Lumber for
11 the period ending July 31st, 2009, and it shows
12 similar information to the invoice we just
13 reviewed, except on the second page it shows all
14 tax rather than no tax.

15 Q. On the second page?

16 A. Second page, all tax.

17 Q. So if you look under the opening
18 odometer --

19 A. Yep. It shows the product they
20 purchased, the gallons, all tax, the quantity and
21 the price of the fuel.

22 Q. So that means -- what does that mean?

23 A. The price of the fuel?

24 O. No. The all tax.

25 A. All tax? That means that they are set up

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1 on a description of all tax in these tax flags that
2 we set up where this would be for a taxable
3 customer, and the no tax is set up for a
4 nontaxable -- an exempt customer.

5 Q. So you're looking at --

6 A. At a setup screen on the cardlock fueling
7 network computer where we assign descriptions and
8 set the yes/no tax flags based on the product,
9 which is diesel, and the state, Pennsylvania, and
10 all the different taxes, the borough, federal
11 excise, state excise, city, county and the sales
12 tax.

13 So when someone is taxable, that
14 description is all tax, and someone who is
15 nontaxable, that description shows up on the
16 invoice as no tax.

17 Q. Okay. Could you -- I may have that -- I
18 want to put that as an exhibit. I may have a copy
19 of it.

20 A. If not, you're welcome to have this one.

21 Q. We'll just label this Exhibit 9.

22 (Powell Deposition Exhibit No. 9 was
23 marked for identification.)

24 BY MS. SPRIGGS:

25 Q. Well, we'll just keep that so we'll know

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1 that that's what you were referring to.

2 So when the price is computed then for
3 the Lezzer Lumber, then for example on the second
4 page, the 2.879 which says all tax is a quantity of
5 62.14 gallons.

6 A. Correct.

7 Q. So that price would include tax?

8 A. Federal excise, state, two state taxes,
9 yes, which on the diesel fuel come to 62.4 or 5
10 cents.

11 Q. So if we go back to compare to the tax
12 exempt, the Bellefonte Borough --

13 A. Mm-hmm.

14 Q. -- where the taxable customer, it says
15 all tax on the invoice, then for the nontaxable it
16 says no tax?

17 A. Correct.

18 Q. And that's standard.

19 So that's the standard procedure?

20 A. Yep, that is the -- and that comes right
21 off these tax flags that are set up where it says
22 all tax, and for the tax exempt customers, it says
23 no tax.

24 Q. Okay.

25 (Powell Deposition Exhibit No. 10 was

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1 marked for identification.)

2 BY MS. SPRIGGS:

3 Q. And Exhibit 9, these are the exemption
4 certificates provided by J.J. Powell.

5 Are you familiar with these?

6 A. Yes.

7 Q. So when these came into the office, were
8 they provided to you?

9 A. No. They would have gone to Angie
10 Cuthbert.

11 Q. Okay. So when -- let's take -- on the
12 first page, this is the exemption provided by Alpha
13 Fire Department, and it identifies that the
14 purchaser is a state -- let's see -- is a state or
15 local government and that taxable fuel, to which
16 the certificate relates, is purchased for the
17 exclusive use of the purchaser.

18 But it just says taxable fuel. It
19 doesn't identify what they're purchasing.

20 So is there anywhere on the certificate
21 that you know of where the entity indicates what
22 they're purchasing?

23 A. Only that it's taxable fuel.

24 Q. Okay. Well, when they say "taxable
25 fuel," what does that mean?

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1 A. That would mean diesel fuel, gasoline,
2 any fuel that we would deliver that is taxable
3 they're claiming to be tax exempt.

4 Q. Okay. So for this first one, then it
5 says -- it checks all orders placed by the
6 purchaser for the period beginning 4/1/08 and
7 ending 4/1/11, and then it says, a period not to
8 exceed 12 calendar quarters will be for the
9 exclusive use of the state or local government.

10 So did J.J. Powell prepare these and
11 provide these to the Alpha Fire Department or did
12 Alpha Fire Department prepare their own?

13 A. In preparing it -- I'm not sure what you
14 mean by preparing it.

15 Q. Well, did you -- is this a form that J.J.
16 Powell sent to Alpha Fire Department and said, fill
17 this out, or did Alpha Fire Department prepare a
18 form and just send it to you?

19 A. Could have been either way.

20 Q. You don't recall which?

21 A. No.

22 Q. Okay. So J.J. Powell started selling to
23 Alpha Fire Department on 4/1/08. Is that correct?

24 A. Probably a long time before that.

25 Q. Okay. But for this certificate 4/1/08?

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1 A. Yeah.

2 Q. And what date is it signed?

3 A. 7/27/2010.

4 Q. Okay. So explain what happened between
5 4/1/08 and 7/27/2010 in terms of J.J. Powell was --
6 they were purchasing fuel from J.J. Powell and
7 saying they were tax exempt?

8 A. They were. And whether or not they had a
9 certificate with us that was signed in a different
10 date or time, I don't know.

11 Q. Okay. And the others are similar.

12 But could you just look through and just
13 verify that these are all -- I think there's
14 something. There may be something attached at the
15 back in addition to the claims.

16 Is there a claim for a refund at the very
17 back of yours?

18 A. Yeah.

19 You want to take that?

20 Q. I'll just make that a separate exhibit.

21 So let's take that one off.

22 But other than the claim for refund --

23 A. They generally look like exemption
24 certificates.

25 Q. That were submitted?

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1 A. Yes.

2 Q. So it's fair to say that for many of the
3 certificates, according to what we have in front of
4 us, J.J. Powell was providing or selling fuel to
5 the government entities, and it appears that they
6 in many cases signed for -- signed their
7 certificate months after the -- they had already
8 purchased the gas or fuel?

9 A. No, I don't know that that's true or not
10 true, because we may have had certificates prior to
11 these that would have covered the same period or a
12 period that overlaps the periods that these cover.

13 Q. Okay. But from what we have in front of
14 us --

15 A. Yep.

16 Q. -- there were --

17 A. The dates don't necessarily match.

18 Q. Okay.

19 (Powell Deposition Exhibit No. 11 was
20 marked for identification.)

21 (Discussion was held off the record.)

22 BY MS. SPRIGGS:

23 Q. So I've handed you Exhibit 11, which are
24 the claims for refund filed by J.J. Powell.

25 And are you familiar with these

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1 documents?

2 A. I am.

3 Q. And did you prepare them?

4 A. I did not.

5 Q. And do you know, can you read whose
6 signature --

7 A. That is my signature.

8 Q. You signed it?

9 A. I did.

10 Q. Okay. And can you explain the claims for
11 refund?

12 A. These, after we went through the appeal
13 process, were denied, we had to file a claim for
14 these refunds so that we could bring this action.

15 Q. Okay. And on the first claim for the
16 period July 1, 2009 through September 30th, 2009,
17 and under the explanation it says, "Exemption
18 certificates were maintained for a period not to
19 exceed 12 calendar quarters in accordance with
20 Treasury Regulation 48.4041-15(b) as opposed to 12
21 calendar months in accordance with Publication 510.
22 See attached appeal for additional information."

23 So could you explain the grounds for the
24 claim?

25 A. For the explanation?

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1 Q. Yes.

2 A. The Treasury Reg 48.4041 states that an
3 exemption certificate is good for a period of 12
4 calendar quarters.

5 Q. So does Treasury Reg 48.4041-15 apply to
6 J.J. Powell?

7 A. I believe so.

8 Q. And was it in effect in 2009 through
9 2010?

10 A. I believe so.

11 Q. Okay. If it was not -- well, strike
12 that.

13 It says the exemption certificates that
14 we just looked at were maintained for a period not
15 to exceed 12 calendar quarters.

16 A. Correct.

17 Q. So that was J.J. Powell's policy?

18 A. That was what we believed to be the
19 federal government's policy.

20 Q. And that's in accordance with the
21 Treasury Regulation you cite?

22 A. Right.

23 Q. Okay. Did you look at any other
24 regulations?

25 A. We would have received information,

Powell, Robert Keith

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¹ particularly from the Pennsylvania Petroleum
² Association with regard to its regulations.

3 But did we read all the documents that
4 came out of the Internal Revenue Service? No.

5 Q. Was there any discussion about whether
6 this regulation applied to J.J. Powell?

7 A. Not prior to our audit.

8 Q. Okay. And there was no discussion about
9 whether there were other regulations that could
10 apply to J.J. Powell in terms of the exemption
11 certificates?

12 A. No.

13 Q. And the grounds for the claims are the
14 same on all of the claims for refund?

15 A. Correct.

16 MS. SPRIGGS: Why don't we take a short
17 break and I'll see if I have any further questions
18 for you?

21 BY MS. SPRIGGS:

22 Q. I have a few questions about the audit.

23 So when the IRS -- at the conclusion of
24 the audit, did you have a discussion with the
25 agent?

Powell, Robert Keith

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1 A. I was not there, but the agent had a
2 discussion with Bob Hummel and Doug Goss in our
3 office. And then they called me on the phone, and
4 I talked with Doug Goss.

5 Q. Okay. And what was the -- what did you
6 discuss?

7 A. The discussion with Doug Goss was that
8 the agent believed that these exemption
9 certificates were not maintained properly and that
10 we owed the -- based on his calculations, we owed
11 the IRS roughly \$250,000, but if we paid \$80,000
12 today, that it would be done with and over.

13 Q. Okay. And did you discuss with the
14 agent -- was there a discussion with the agent
15 about the problem with the exemption certificates?

16 A. Not with me.

17 Q. So you didn't have --

18 A. I didn't -- I'm sorry -- I didn't talk
19 with the agent that day. I only talked with Doug
20 Goss.

21 Q. Okay. And then was there a general
22 discussion with J.J. Powell about the exemption
23 certificates?

24 A. At some time later, yes.

25 MS. SPRIGGS: Can we go off the record?

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1 (Discussion was held off the record.)

2 BY MS. SPRIGGS:

3 Q. So was there a discussion at J.J. Powell
4 about the problems with the -- the agent's problems
5 with the certificates?

6 A. Yeah. So we -- once I got back to the
7 office and talked with Bob and Doug and my brother
8 Jeff, we discussed the exemption certificates,
9 decided we should call the Pennsylvania Petroleum
10 Association to see what they know about -- what
11 they knew about the three-year certificates,
12 audits, all that kind of thing, talked with them.

13 They gave me the number to Cloyd Van
14 Hook, who I then talked with, and we started going
15 through this whole process.

16 Q. Did you make any changes in terms of how
17 the exemption certificates are handled?

18 A. Yes.

¹⁹ Q. And what happened?

20 A. We now use the form that is suggested by
21 Publication 510 and get them every 12 months.

22 Q. And when did you start with the using
23 that form?

24 A. Immediately after the audit.

25 Q. And what did you do? Did you -- in terms

Powell, Robert Keith

December 10, 2014

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1 of did you go and have the exempt entities all fill
2 out new forms, or what did you do?

3 A. We did. Yep, that's exactly. We just
4 sent them out to all the exempt entities and got
5 new forms from all of them.

6 Q. Did they cover any of the periods that
7 are in issue?

8 A. No.

9 Q. So it was going forward?

10 A. Going forward.

11 Q. So in terms of what's in issue, the
12 documents all remained the same? No changes to
13 that?

14 A. That's correct. Yes.

15 Q. You mentioned that J.J. Powell thought it
16 was three calendar quarters?

17 A. Three calendar years, 12 calendar
18 quarters.

19 Q. I mean 12 calendar quarters.

20 And is there any -- and did you also have
21 alternatives or was that your --

22 A. No, there was no other alternative.

23 Q. That was just that was the procedure?

24 A. The one, yep, federal excise tax
25 exemption form that we believed existed.

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1 Q. And you had been audited before, you
2 said?

3 A. Many, many times.

4 Q. And no one had said anything about the --

5 A. Exemption certificates, no.

6 Q. This was the first time you'd been
7 audited on the exemption certificates?

8 A. No. We'd been audited on the exemption
9 certificates in every audit, federal excise audit,
10 prior to that for many years.

11 Q. Did you -- were you involved with
12 appeals? Did you go to IRS appeals?

13 A. No, I don't think we did.

14 MR. VAN HOOK: He didn't.

15 THE WITNESS: I'm sorry. I don't know
16 the exact process.

17 BY MS. SPRIGGS:

18 Q. You weren't involved in that. Okay.

19 MS. SPRIGGS: I think I have no further
20 questions.

21 MR. VAN HOOK: For him or for anyone?

22 MS. SPRIGGS: No. For him.

23 (Whereupon, the deposition was adjourned
24 at 12:30 p.m.)

25

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1

ACKNOWLEDGMENT OF DEPONENT

2

3

I, Robert Powell, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me, and any corrections appear on the attached Errata
Sheet signed by me.

4

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1/28/15



12

(DATE)

(SIGNATURE)

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1 State of Pennsylvania

2 County of Franklin, to wit:

3 I, Stacey L. Daywalt, a Notary Public of
4 the State of Pennsylvania, County of Franklin, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by Counsel. I
9 further certify that the examination was recorded
10 stenographically by me and this transcript is a
11 true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor an employee of
14 counsel, nor related to any of the parties, nor in
15 any way interested in the outcome of this action.

16 As witness my hand and Notarial Seal
17 this 22nd day of December, 2014.

18 
19

20 Stacey L. Daywalt, Notary Public

21 My Commission Expires: February 10, 2018

22

23

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25

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Hummel, Robert

December 10, 2014

1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

-----:
J.J. POWELL, INC., :
Plaintiff, :
vs. : Civil Action No.
THE UNITED STATES, : 1:13-cv-00353-LJB
Defendant. :
-----:

DEPOSITION OF ROBERT HUMMEL

State College, Pennsylvania

Wednesday, December 10, 2014

12:35 p.m.

 ORIGINAL

Reported by: Stacey L. Daywalt

Defendant
Exhibit

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Hummel, Robert

December 10, 2014

2

1 Deposition of ROBERT HUMMEL taken at:
2 Magisterial District Court, 49-1-01
3 131 South Fraser Street, Suite 5
4 State College, Pennsylvania 16801

5

6 Pursuant to notice, before Stacey L.
7 Daywalt, Notary Public in and for the Commonwealth
8 of Pennsylvania.

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Hummel, Robert

December 10, 2014

3

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 CLOYD F. VAN HOOK, ESQUIRE

4 GUARISCO & GORDES, LLC

5 601 Poydras Street, Suite 2355

6 New Orleans, Louisiana 70130-6008

7 (504) 587-7007

8

9 ON BEHALF OF DEFENDANT:

10 JENNIFER DOVER SPRIGGS, ESQUIRE

11 U.S. DEPARTMENT OF JUSTICE

12 555 4th Street NW, Room 8116

13 Washington, DC 20044

14 (202) 307-0840

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Hummel, Robert

December 10, 2014

4

1 C O N T E N T S

2

3	WITNESS:	Robert Hummel	PAGE
4		By Ms. Spriggs	5

5

6 E X H I B I T S

7	NUMBER	DESCRIPTION	PAGE
8	12	Claim For Refund of Excise Taxes, gasoline	8
10			
11	13	Claim For Refund of Excise Taxes, undyed diesel fuel	14
13			
14			
15			
16			
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Hummel, Robert

December 10, 2014

5

PROCEEDINGS

2 Thereupon,

ROBERT KEITH POWELL,

4 was called as a witness by Counsel for the
5 Defendant, and having been duly sworn by the Notary
6 Public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 BY MS. SPRIGGS:

9 Q. Could you state your name for the record?

10 A. Robert Hummel.

11 Q. Mr. Hummel, my name is Jennifer Spriggs
12 and I'm here today on behalf of the United States
13 with respect to a lawsuit filed by J.J. Powell,
14 Inc. and the Court of Federal Claims.

15 And have you had your deposition taken
16 before?

17 A. No.

18 Q. You may have heard my explanation
19 earlier, but the court reporter is transcribing and
20 she needs to hear both of us.

21 A. Yes.

22 Q. So if you wait till I finish so we don't
23 overlap.

24 If you don't understand any question I
25 ask, let me know. I'll try to rephrase it.

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1 And she needs a verbal response from you
2 because she has to type in your response.

3 Could you state your business address?

4 **A. It's 109 West Prescott Street,**
5 **Philipsburg, Pennsylvania.**

6 Q. And could you spell your last name?

7 **A. H-U-M-M-E-L.**

8 Q. And I'd like to show you what's been
9 marked as Deposition Exhibit 1. And this is
10 deponent designation, and it says that you are
11 designated to testify for the plaintiff on the
12 preparation of the Form 8849 Claim For Refund of
13 Excise Tax. Is that correct?

14 **A. Yes.**

15 Q. And are you prepared today to testify to
16 those matters?

17 **A. Yes.**

18 Q. Is there any reason today that you can't
19 testify or provide accurate testimony?

20 **A. No.**

21 Q. Okay. Where are you currently employed?

22 **A. J.J. Powell, Inc.**

23 Q. And what is your position there?

24 **A. It's a little bit of everything. It's**
25 **fuel tax preparations, dispatch, fuel trucks,**

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1 accounts payable. That's pretty much most of it.

2 Q. What is your position?

3 A. I don't have a title per se.

4 Q. Oh, okay.

5 A. I prepare fuel taxes. I dispatch
6 transport deliveries. I gather all the pricing
7 information. I do accounts payable.

8 Q. And how long have you been with J.J.
9 Powell?

10 A. Thirty-six years.

11 Q. So do you work in -- what department do
12 you work in?

13 A. In the accounting department.

14 Q. And did you attend college?

15 A. I did.

16 Q. And where did you attend?

17 A. Penn State.

18 Q. And what did you major in?

19 A. Business administration.

20 Q. And are you -- do you have any graduate
21 education?

22 A. No, I don't.

23 Q. And do you have any professional
24 licenses?

25 A. No, I don't.

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1 Q. Okay. And have you worked any place
2 other than J.J. Powell?

3 A. In my lifetime?

4 Q. Yes.

5 A. Before J.J. Powell I worked for GC Murphy
6 Company. I don't know if you -- you probably don't
7 know. They're out of business now.

8 It was a retail store, a retail chain.

9 Q. And what did you do there?

10 A. I was a manager, store manager.

11 Q. Did you -- in preparing the excise tax
12 returns, were you involved with discussions with
13 the revenue agent?

14 A. For this audit?

15 Q. Yes.

16 A. I was there, yes, whenever -- I assembled
17 all the reports and everything he needed to do the
18 audit, yeah, all the reports that are included with
19 the 8849.

20 Q. Oh, okay. So did you have discussions
21 with the agent at the conclusion of the audit?

22 A. I was in the room with he and Doug Goss.
23 There was really not much discussion.

24 Q. Okay.

25 (Hummel Deposition Exhibit No. 12 was

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1 marked for identification.)

2 BY MS. SPRIGGS:

3 Q. Show you what's a been marked as Exhibit
4 12. This is a Claim For Refund of Excise Tax, Form
5 8849 --

6 A. Mm-hmm.

7 Q. -- for the fourth quarter of 2009. It's
8 for gasoline.

9 A. Mm-hmm.

10 Q. Did you prepare this document?

11 A. I did.

12 Q. Okay. So could you explain what this is?

13 A. **Claim for refund for sales to exempt
14 entities for that quarter, for gasoline sales for
15 the fourth quarter of '09.**

16 Q. Okay. And it's signed by?

17 A. **Jeffrey, yes. That's the president of
18 the company.**

19 Q. So on the first page it's checked sales
20 by registered ultimate vendor?

21 A. **That's correct.**

22 Q. So J.J. Powell is a registered ultimate
23 vendor?

24 A. **Yes.**

25 Q. And can you explain what that means?

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1 A. It's for Form 637, registration to make
2 exempt sales to exempt entities.

3 Q. Okay. And in making the sales to exempt
4 entities, were you involved with the keeping track
5 of what they needed from the exempt entities in
6 order to claim these sales?

7 A. No. My job basically was gathering all
8 the information from the sales journals for these
9 quarters and preparing the form to be submitted.

10 Q. Okay. So on the second page it says
11 sales by registered ultimate vendors of undyed
12 diesel fuel.

13 And when you prepared this form, how did
14 you go about determining that the sales were for
15 undyed diesel fuel?

16 A. Well, there's undyed diesel fuel and dyed
17 diesel fuel. So on the sales reports that are
18 produced from the cardlock system and from the
19 delivery truck system, the product is identified as
20 undyed diesel fuel, or dyed, in the case of diesel
21 fuel.

22 The dye product is a nontaxable product.

23 Q. So you had pulled that from the
24 accounting records?

25 A. Yeah, from the sales journals.

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1 Q. So continuing under the first Item Number
2 1 on Page 2, it says, "The claimant sold the diesel
3 fuel at a tax excluded price, repaid the amount of
4 the tax to the buyer or obtained written consent of
5 the buyer to make the claim."

6 So which of those does J.J. Powell fall
7 under?

8 A. **We sell at a tax excluded price.**

9 Q. It says, "Claimant has obtained the
10 required certificate from the buyer and has no
11 reason to believe any information is false."

12 So when it says, "The claimant has
13 obtained the required certificate," did you get
14 involved with ensuring that it was the required
15 certificate?

16 A. **No, I did not.**

17 Q. On the second item -- no. That's --

18 A. **That's undyed kerosene. That's just the**
19 **different products for --**

20 Q. So on the -- I guess this is the second.
21 It's actually the third page, but it says Page 2.

22 So under A it says, use by nonprofit
23 educational organization. It has a rate in
24 gallons.

25 Could you explain what that is?

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1 A. Well, nonprofit education credit, that
2 would be the school districts.

3 And whenever you file a claim on
4 gasoline, they require that it's broken down how
5 much you sold to the school districts or nonprofit
6 education or how much was sold to the state and
7 local governments. It's claimed separately.

8 It's one total claim, but they have it
9 broken out into the school districts and the state
10 and local governments.

11 Q. And what is the rate?

12 A. That's the federal tax rate.

13 Q. For?

14 A. Gasoline.

15 Q. For gasoline?

16 A. Mm-hmm.

17 Q. It's the same for this?

18 A. Right.

19 Q. And then -- so attached you have
20 worksheets?

21 A. This is actually part of the return the
22 IRS requires. It's part of Schedule 2.

23 It's a list of all the customers that you
24 sold the nontaxable product to with their taxpayer
25 ID numbers.

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1 Q. Okay. And then the fourth quarter,
2 there's an attachment that says fourth quarter
3 federal exempt gas sales.

4 A. Yeah. This is a worksheet that I created
5 myself, and what it does is just keep track of each
6 of the tax free entities that we've sold to, how
7 many gallons each bought by month for the quarter
8 with the total broken down to each one of them for
9 the entire quarter.

10 The top part where it says fuel
11 management, we've been referring to that as
12 cardlock all along this morning, but I call it fuel
13 management. These are all cardlock sales at the
14 top, these. (Indicating.)

15 At the bottom where it says delivered,
16 that's just a delivery truck, small delivery to the
17 customers. We have a tank for those.

18 Q. Okay.

19 A. So I just take and add everything up and
20 bring it down to the bottom and get the total
21 gallons for the quarter and multiply it times the
22 rate, and that's the claim that I submit. Should
23 equal what's on right here. (Indicating.)

24 Q. On Page 2?

25 A. Right, on Page 2. And my worksheet

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¹ equals what the amount of the claim was for.

2 Q. Okay. So this is for gasoline?

3 (Hummel Deposition Exhibit No. 13 was
4 marked for identification.)

5 BY MS. SPRIGGS:

6 Q. This is Form 8849 for the fourth quarter
7 of 2009. It's for undyed diesel fuel.

8 And are you familiar with this document?

9 A. I am.

10 Q. And could you explain what it is?

11 A. Same as what we've talked on gasoline,
12 only this is for the undyed diesel fuel portion,
13 fourth quarter of 2009, sales to nontaxable
14 entities for that quarter.

15 Q. So on Page 2 it says under 1A use by
16 state or local government. Then it has 45,690
17 gallons.

18 A. Yes.

19 Q. So could you explain?

20 In the details -- is there a detail that
21 would show that, those gallons?

22 A. Yeah. That would be this same worksheet
23 as on Page 2 right here. (Indicating.)

24 Take all these. This is a list of all
25 the exempt entities here and total it out. It will

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1 total out to 45,690 gallons, which there's really
2 no place on here that it's totalled.

3 Q. There's not a total?

4 A. No. If you add all those up, it's going
5 to add up to 45,690.

6 Q. Okay. Did you prepare their -- attached
7 are some -- it says customer federal excise tax
8 reports. They start at Page 1.

9 A. Okay.

10 Q. Bates numbers starting with 92?

11 A. Page 1?

12 Q. Yeah. Did you prepare these?

13 A. No. This is a report that they generate
14 for me each month from the cardlock sales system.

15 Q. Okay. And when you get this report, what
16 do you do with it?

17 A. I just go through it and circle -- this
18 includes all nontaxable sales, on road and off
19 road.

20 So I go through, and the ones that are
21 circled are -- that's ultra low sulfur diesel.
22 That's highway use diesel fuel.

23 So I go through and pick up the total
24 gallons on each of those by customer and then file
25 them onto the worksheet. I don't know if there's a

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1 worksheet attached to this one or not.

2 Q. So you pick up the quantity?

3 A. Yes. It's the total gallons.

4 Yeah, it's on the back of this worksheet.

5 I think it's right before that, the page we looked
6 at.

7 Q. So this is the page ending in Bates

8 Number 916?

9 A. Flip two more, I think.

10 Q. 917.

11 A. 919.

12 Q. Okay. 919.

13 A. This is where, as I go through this
14 report and pick up these gallons, and these are
15 transferred onto my worksheet over here.

16 Q. So where it says federal exempt --

17 A. Federal exempt, yes. That's the gallons
18 from this report.

19 Q. Then there's a reference to a Schedule 9?

20 A. Yeah. I heard you talking earlier about
21 it.

22 Schedule 9 and Schedule 10 refers -- I do
23 one worksheet for the federal excise and
24 Pennsylvania state motor taxes combined on this
25 worksheet.

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1 On this side these are the exempt
2 gallons, the gallons that are exempt from federal
3 excise tax. These are the gallons that are exempt
4 from state tax.

5 Schedule 9 and Schedule 10 are simply a
6 schedule that Pennsylvania state uses. Whereas,
7 Schedule 9 with Pennsylvania refers to a local
8 government, Schedule 10 is for fire departments and
9 ambulance services.

10 So I need to distinguish for the state --
11 this actually -- in effect, this Schedule 9 and 10
12 does not have anything to do with federal. It's
13 all with the state side of it, because you have to
14 file a separate schedule for separate different
15 uses. So that's why it's Schedule 9 and Schedule
16 10.

17 Then going back to that, I just pick up
18 the gallons off of this report and then include
19 them on this worksheet here.

20 Q. Okay. There is -- the fourth column on
21 this page that you just have checked --

22 A. That's just whenever I'm preparing the
23 8849 over here and when I'm preparing the state
24 motor fuel tax return over here, I just go through
25 customer by customer and put them on my worksheet

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1 and check them off as I go.

2 They did drag me kicking and screaming
3 into the computer age here a couple years ago. I
4 don't do this by hand anymore.

5 (Discussion was held off the record.)

6 BY MS. SPRIGGS:

7 Q. Now, when you're preparing the excise tax
8 return of the excise tax claims for refund, do you
9 have to -- well, let me rephrase that.

10 For J.J. Powell customers, are there any
11 customers that purchase fuel using a credit card?

12 A. No, nothing I'm aware of.

13 Q. So for J.J. Powell all of their customers
14 either have -- either pay -- well, how do they pay?

15 A. Well, it's all Pacific Pride cards, as we
16 discussed earlier, or the delivery -- truck
17 deliveries are posted and invoiced monthly for
18 them.

19 There's no credit card payments.

20 Q. Well, earlier there was discussion about
21 a place called Snappy's Convenience.

22 So for example at a Snappy's Convenience,
23 customers come in.

24 How do they pay for the gas?

25 A. That's a completely different -- none of

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1 the things on 8849 apply to any sales at the
2 Snappy's Convenience. They're not -- the two
3 aren't related as far as any claims.

4 Q. Well, what is included in those, in the
5 8849s?

6 A. The cardlock sales and any deliveries
7 that we make from our bulk plant directly to the
8 customer's tank. That's all.

9 Q. So when -- your universe when you're
10 preparing these is the cardlock and delivery?

11 A. That's correct.

12 Q. Okay. So the Snappy's Convenience
13 wouldn't come into this because why?

14 A. Well, there's not a relation here to
15 these exempt sales to Snappy's Convenience stores.
16 There's no products sold at the Snappy's
17 Convenience stores that goes through this claim
18 for -- exempt sales that are claimed through this
19 8849.

20 Q. So all of the exempt sales are either
21 cardlock or delivered?

22 A. Correct.

23 Q. And the cardlock Pacific Pride card is
24 not a -- what kind of card is Pacific Pride?

25 A. It's -- what do you mean what kind of

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1 card?

2 It's just a card that's distributed by
3 Powell through the Pacific Pride network that the
4 customer uses to make purchases at Pacific Pride
5 sites.

6 Q. But is it a credit card?

7 A. It's a card that unlocks the pump so that
8 they can use the pump, and then the sale is
9 transmitted back to J.J. Powell for billing.

10 Q. And the billing -- and there's no other
11 entity involved in terms of the -- like another --
12 there's no other credit card involved?

13 A. No.

14 MS. SPRIGGS: If you'll go off the
15 record.

16 (Recess taken from 1:01 p.m. to 1:14
17 p.m.)

18 BY MS. SPRIGGS:

19 Q. We're back on the record. And I'd like
20 to show you what's been marked as -- this is
21 Exhibit 10. These are the exemption certificates.

22 Are you familiar with those?

23 A. I've seen them in the past, yeah.

24 Q. Well, do you look at them or review them
25 in connection with preparing your -- the Form

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1 8849s?

2 A. I do not.

3 Q. You don't?

4 A. No.

5 Q. So when you're preparing this --
6 preparing the Form 8849, so you don't check to see
7 if the entities have a certificate on file with
8 J.J. Powell?

9 A. I don't check each one, no.

10 Q. Is there someone who is responsible for
11 doing that?

12 A. At that time in question, Angie Cuthbert
13 was in charge of maintaining the exemption
14 certificates.

15 Q. So when you prepared the Form 8849, you
16 understood -- or did you understand that there
17 should be a valid exemption certificate?

18 A. I did.

19 Q. You did understand that?

20 A. Mm-hmm.

21 Q. And so in preparing the 8849s, what did
22 you -- since you knew that that was required, what
23 did you do to ensure that was being followed?

24 A. Well, that's -- I mean, that was in her
25 area of responsibility to have the certificates on

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1 file and dated. And if there were any that were
2 lapsed or needed, then that's when they would
3 change -- if they didn't have a certificate, then
4 they wouldn't be.

5 But it was her job to maintain the
6 certificates. So I didn't go down each quarter and
7 check each certificate, no.

8 Q. But to your knowledge did anyone --
9 before you filed the Form 8849 with the IRS, did
10 anyone verify that or discuss with you whether
11 there was or was not a valid certificate?

12 A. No.

13 Q. So you would -- so did you do anything at
14 all in terms of checking whether the entities were
15 exempt or not?

16 A. I did not. I prepared the forms.

17 Q. Who filed -- who actually filed the 8849s
18 with the IRS?

19 A. Well, I prepared the forms and then the
20 officers signed it, and I mailed it in, if that's
21 what you mean.

22 Q. Okay. But as far as you know, there was
23 no coordination between the preparation of the Form
24 8849 and checking to see if the exemption
25 certificates were present and valid?

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1 A. **There was -- no.**

2 Q. Okay.

3 MS. SPRIGGS: I don't have any further
4 questions.

5 I would ask that you read and sign the
6 deposition.

7 (Whereupon, the deposition was adjourned
8 at 1:18 p.m.)

9

10

11 ACKNOWLEDGMENT OF DEPONENT

12

13 I, Robert W Hummel, do hereby
14 acknowledge that I have read and examined the
15 foregoing testimony, and the same is a true, correct
16 and complete transcription of the testimony given by
17 me, and any corrections appear on the attached Errata
18 Sheet signed by me.

19

20

21 01-28-15

22 (DATE)

Robert W Hummel

(SIGNATURE)

23

24

25

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1 State of Pennsylvania

2 County of Franklin, to wit:

3 I, Stacey L. Daywalt, a Notary Public of
4 the State of Pennsylvania, County of Franklin, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by Counsel. I
9 further certify that the examination was recorded
10 stenographically by me and this transcript is a
11 true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor an employee of
14 counsel, nor related to any of the parties, nor in
15 any way interested in the outcome of this action.

16 As witness my hand and Notarial Seal
17 this 22nd day of December, 2014.

18
19 
20 Stacey L. Daywalt, Notary Public

21 My Commission Expires: February 10, 2018

22

23

24

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637(Rev. December 2013)
Department of the Treasury
Internal Revenue Service**Application for Registration****(For Certain Excise Tax Activities)**► Information about Form 637 and its instructions is at www.irs.gov/form637.

OMB No. 1545-0014

Part I Identification of Applicant

Type or print	Name of individual, corporation, partnership, association, etc.	Employer identification number
	Business name, if different from above	Telephone number
	Mailing address (number, street, and room or suite no.; if P.O. box, see instructions)	Fax number
	City or town, state, and ZIP code	
	If you listed a P.O. box above, or if your street address is different from your mailing address, list your street address (including city or town, state, and ZIP code)	

Part II Activities. Enter the activity letter from the chart on pages 2-4 and a brief description of each activity for which you are applying for registration. Also, attach the Additional Information Required for each activity to which this application applies.

Activity Letter	Activity Description

Part III General Information**Section A—For All Applicants**

Answer all the questions below. Attach a separate sheet(s), as needed, to answer items 2b through 7. Identify each sheet with your name and employer identification number (EIN) at the top, and write the number of the item to which each answer applies. If any questions do not apply to you, explain why.

- 1a Are you or will you be required to file Form 720, Quarterly Federal Excise Tax Return? Yes No
 b Have you previously applied to be registered by any IRS office? Yes No
 c Have you, or any related entity, had a Certificate of Registry or Letter of Registration revoked by any IRS office? Yes No
 d If you answered "Yes" to b or c, enter the name of the IRS office _____
- 2a List the date your business started ► Month _____ Year _____
 b Explain in detail your business activity.

- 3 For all other business entities to which you are related, list:

- a The name and EIN of the related entity,
- b The percentage of ownership, and
- c How you are related (for example, stock, partnership, etc.).

- 4 List all addresses of current business operations (include out-of-state or foreign operations, if applicable).
 5 List the address where your books and records are kept (if different from the address in Part I).
 6 List the names and taxpayer identification numbers (TINs) of all business owners, corporate officers, members, or partners.
 7 List the name and phone number of a person whom we can contact about this application.

Section B—For All Fuel Applicants

If you are applying for fuel activities K, M, S, X, Y, AB, AF, AL, AM, CC, NB, SB, UA, UB, UP, or UV, you must answer questions 8 and 9.

- 8 Attach a copy of your last federal income tax return and other evidence that reflects financial responsibility such as your income statement, balance sheet, or bond rating.
- 9 Describe any changes in your ownership or changes of controlling stock ownership in the past 2 years. If none, enter "None." Also see Changes in Registration in the Instructions.

Defendant Exhibit

29

Go to Section C on Page 2

Section C—For Certain Fuel Applicants

If you are applying for fuel activities K, M, S, or Y, answer each question below by checking the "Yes" or "No" box. If you answer "Yes" to any of these questions, provide a full explanation. Attach additional sheets if needed.

Have you or any related person (see Regulations section 48.4101-1(b)(5)) been:

- 10 Assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any state) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited? Yes No
- 11 Assessed any penalty under chapter 68 of the Internal Revenue Code, and the penalty has not been wholly abated, refunded, or credited? Yes No
- 12 Convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any state), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction? Yes No
- 13 Convicted, under the laws of the United States or any state, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction? Yes No
- 14 Assessed any tax under section 4103 (willful failure to pay the tax imposed by section 4041(a)(1) or 4081) and the tax has not been wholly abated, refunded, or credited? Yes No
- 15 Advised that your registration has been revoked? Yes No

Sign Here Under penalties of perjury, I declare that I have examined this application, and accompanying schedules and statements, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature

Title

Date

Type or print name below your signature.

Activity Letter**Additional Information Required**

A Manufacturer of gas guzzler automobiles, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, arrow shafts, taxable tires, taxable medical devices, or vaccines.	1. List all articles you manufactured. Include advertising brochures, if available. 2. List the organizations or businesses (for example, state or local government or school) to which you intend to sell articles tax free. 3. List the monthly volume of tax-free articles you intend to sell. Also, list the monthly volume of taxed articles you intend to sell.
B Buyer of sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, gas guzzler automobiles, bows, quivers, broadheads, points, taxable medical devices, or vaccines for further manufacture or for resale to a buyer for further manufacture.	1. List articles you intend to purchase for further manufacturing or for resale for use by the buyer for further manufacturing. 2. List the businesses that you will sell articles to for use in further manufacturing, if applicable. 3. List your other types of sales of articles other than for further manufacturing.
C Buyer of taxable tires for use on or in connection with the sale of another article the buyer manufactures and sells (1) for export, (2) to state and local governments, (3) to nonprofit educational organizations, or (4) as supplies for vessels or aircraft.	1. List the type and weight of the tires you bought. 2. List the articles you manufactured (1) on which the tires will be used or (2) in connection with which the tires will be sold. 3. List the organizations or businesses with which you intend to have tax-exempt sales.
D Buyer with a place of business in the United States purchasing taxable medical devices, vaccines, gas guzzler automobiles, taxable tires, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, or arrow shafts for export or for resale to a second purchaser for export.	1. List the articles you intend to buy for export or resale to others for export. 2. List the businesses to which you intend to sell articles for export.

Activity Letter	Additional Information Required
E Buyer (other than state or local government) of gas guzzler automobiles for ambulance, law enforcement, or firefighting.	Provide the general information for all applicants.
F Nonprofit educational organization, other than a public school, buying taxable tires, certain heavy vehicles, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, or arrow shafts for its exclusive use.	<ol style="list-style-type: none"> 1. Provide a general description of the type of your educational facility, including faculty, curriculum, and student body. 2. Provide a copy of the IRS determination letter granting your exemption from federal income tax. 3. List products subject to federal excise tax you bought for the exclusive use of your organization and how the products will be used in the operation of your organization. 4. List activities (other than educational) conducted by the organization.
I Buyer (other than nonprofit educational organization or state or local government) of taxable tires for use on certain intercity, local, or school buses.	<ol style="list-style-type: none"> 1. List types and weights of tires you bought. 2. Describe the types of buses (intercity, local, or school) on which the tires are used. 3. Describe how the buses are used in the operation of the business.
K Buyer of kerosene for a feedstock purpose.	List the type of kerosene you purchased; and describe the product and manufacturing process for which the kerosene will be used as a feedstock.
M Blender of gasoline, diesel fuel (including a diesel-water fuel emulsion), or kerosene, producing a taxable fuel outside the bulk transfer/terminal system, including blenders of alcohol fuel mixtures, alternative fuel mixtures, biodiesel mixtures, and renewable diesel mixtures.	<ol style="list-style-type: none"> 1. List the products you bought or produced for blending with gasoline, diesel fuel, or kerosene. 2. List the annual volume of products you bought for blending. 3. List the annual volume of blended taxable fuel you produced.
Q First retail seller of certain heavy vehicles.	<ol style="list-style-type: none"> 1. Describe the heavy vehicles you intend to sell. 2. Describe the exempt sales of the heavy vehicles you intend to make.
S Enterer, position holder, refiner, terminal operator, or throughputter of gasoline, diesel fuel (including a diesel-water fuel emulsion), or kerosene, or industrial user of gasoline.	<ol style="list-style-type: none"> 1. List the annual volume of gasoline, diesel fuel, and kerosene you entered into the United States or produced. 2. List the locations and a description of your refineries, terminals, and pipelines. 3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any fuel. 4. List the business entities to whom you sell, and with which you buy, trade, transfer, or exchange any gasoline, diesel fuel, and kerosene. 5. Provide the annual volume of gasoline, diesel fuel, and kerosene you buy, sell, trade, transfer, or exchange.
V Manufacturer, importer, or buyer of ozone-depleting chemicals (ODCs) for export.	<ol style="list-style-type: none"> 1. List the ODCs you import or manufacture for export. 2. List the companies from which you buy ODCs for export. 3. List the number of pounds for each type of ODC you exported in this calendar year and an estimate for next calendar year. 4. List your export locations, and list your production allowance, consumption allowance, export allowance, and export percentage as set by the Environmental Protection Agency.
X Pipeline operator or vessel operator (including certain deep-draft vessels) within the bulk transfer/terminal system.	<ol style="list-style-type: none"> 1. Schematic or map of your pipeline locations. 2. Names and addresses of facilities served by your pipeline or vessel. 3. Number, description, and capacities of your vessels used to transport taxable fuel.
Y Buyer of kerosene for its use in commercial aviation (other than foreign trade).	<ol style="list-style-type: none"> 1. List the quantity, types, and gross take-off weights of all aircraft you own and/or operate. Include the countries of registration. Aircraft that you operate but that are owned by other persons should be clearly designated. Information should be included as to the operating arrangements. 2. List the average number of operating hours (per month) of each aircraft that is listed in Item 1. Show the number of hours for commercial aviation (other than foreign trade) and noncommercial aviation. 3. If you maintain kerosene storage facilities, list the location and capacity of each facility.
AB Producers and importers of agri-biodiesel.	<ol style="list-style-type: none"> 1. List the annual volume of agri-biodiesel you produced in or entered into the United States. 2. List the locations and a description of your production facilities. 3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any agri-biodiesel. 4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any agri-biodiesel. 5. Provide the annual volume of agri-biodiesel you buy, sell, trade, transfer, or exchange.
AF Producers and importers of alcohol.	<ol style="list-style-type: none"> 1. List the annual volume of alcohol you produced in or entered into the United States. 2. List the locations and a description of your production facilities. 3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any alcohol. 4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any alcohol. 5. Provide the annual volume of alcohol you buy, sell, trade, transfer, or exchange.

Activity Letter	Additional Information Required
AL Alternative fueler that sells for use or uses alternative fuel as a fuel in a motor vehicle or motorboat.	Provide the general information for all applicants.
AM Alternative fueler that produces an alternative fuel mixture that is sold for use or used in the alternative fueler's trade or business.	Provide the general information for all applicants.
BC Qualified blood collector organization buying taxable fuel, taxable tires, and certain heavy vehicles; claiming exemption from the communications tax and heavy highway vehicle use tax; or to claim a credit or payment of certain excise taxes, for its exclusive use in the collection, storage, or transportation of blood.	<ol style="list-style-type: none"> 1. Provide a general description of your blood collection activity. 2. Provide a copy of the IRS determination letter granting you an exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3). 3. Provide evidence of your registration with the Food and Drug Administration as a blood collector.
SB Producers of second generation biofuel.	<ol style="list-style-type: none"> 1. List the annual volume of cellulosic biofuel (including second generation biofuel) you produced in the United States. 2. List the plant material you used to produce the cellulosic biofuel (including second generation biofuel). 3. List the locations and a description of your production facilities. 4. List the names and addresses of any person(s) who will be acting for you as an agent or broker in buying, selling, or transporting any cellulosic biofuel (including second generation biofuel). 5. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any cellulosic biofuel (including second generation biofuel). 6. Provide the annual volume of cellulosic biofuel (including second generation biofuel) you buy, sell, trade, transfer, or exchange.
CC Credit card issuer that issues credit cards for sales of taxable fuel to a state or local government for its exclusive use or for sales of gasoline to a nonprofit educational organization for its exclusive use.	Provide the general information for all applicants.
NB Producers and importers of biodiesel (other than agri-biodiesel) and renewable diesel.	<ol style="list-style-type: none"> 1. List the annual volume of biodiesel and renewable diesel you produced in or entered into the United States. 2. List the locations and a description of your production facilities. 3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any biodiesel and renewable diesel. 4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any biodiesel and renewable diesel. 5. Provide the annual volume of biodiesel and renewable diesel you buy, sell, trade, transfer, or exchange.
QR Qualified retailer of diesel fuel or kerosene sold in Alaska for nontaxable uses.	Provide the general information for all applicants.
UA Ultimate vendor that sells kerosene for use in aviation.	Provide the general information for all applicants.
UB Ultimate vendor that sells undyed diesel fuel or undyed kerosene for use in certain intercity and local buses.	Provide the general information for all applicants.
UP Ultimate vendor that sells kerosene from a blocked pump.	<ol style="list-style-type: none"> 1. Describe the blocked pumps you used to sell kerosene in your business. 2. List the location of your blocked pumps.
UV Ultimate vendor that sells (a) undyed diesel fuel or undyed kerosene to a state or local government for its exclusive use, or (b) gasoline (including aviation gasoline) to a state or local government for its exclusive use or to a nonprofit educational organization for its exclusive use.	Provide the general information for all applicants.

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

The IRS has created a page on IRS.gov for Form 637 and its instructions at www.irs.gov/form637. You can find information about any recent developments affecting Form 637 (such as legislation enacted after we release it) on that page.

What's New

- New activity letter **SB** now includes second generation biofuel. Current **CB** registrants will not need to reapply for the new **SB** registration. Activity letter **CB** is removed because it is no longer applicable.
- Activity letter **QR** is added for qualified retailers of diesel fuel or kerosene sold in Alaska. You do not need to reapply if you have already been issued a correspondence letter of registration as a qualified retailer.
- Activity letter **W** is removed because it is no longer applicable.

General Instructions

Purpose of Form

Use Form 637 to apply for excise tax registration for activities under sections 4101, 4222, and 4682. See the chart on pages 2–4 for the list of activities. Each business unit that has, or is required to have, a separate employer identification number (EIN) is treated as a separate person.

The following persons **must** be registered:

- Pipeline operator or vessel operator: Activity Letter **X**.
- Enterers, position holders, refiners, and terminal operators: Activity Letter **S**.
- Blenders: Activity Letter **M**.
- Producers or importers of alcohol, agri-biodiesel, and biodiesel (including renewable diesel): Activity Letters **AF**, **AB**, and **NB** respectively.
- Producers of second generation biofuel: Activity Letter **SB**. Current **CB** registrants will not need to reapply for new **SB** registrations.

[Pub. 510, Excise Taxes](#), has more information regarding registrations.

Penalty

The penalty for failure to register, if you are required to register, is \$10,000 for the initial failure, and \$1,000 for each day following that you fail to register. The penalty applies unless the failure to register is due to reasonable cause.

How To Apply

Complete Form 637 and submit it with the required additional information described on the chart on pages 2–4. You may use additional sheets for your explanations. Be sure to write your name and EIN on each sheet you attach. You must send all of the required information or the processing of your application will be delayed. The IRS will ask you for additional information if needed, or you may provide additional information at any time.

The application must be reviewed and approved before you are registered for any activity. The review may include inspection of your premises during normal business hours without advance notice. If your application is approved, the IRS will issue a Letter of Registration. The letter will include the activities you are registered for, the effective date of the registration, and your registration number. A copy of Form 637 is not a Letter of Registration. If your application is denied, you will be notified in writing by the IRS that the application has been denied and the reason for the denial.

Employer Identification Number (EIN)

Enter your EIN. If you do not have an EIN, you may apply for one online. Go to the IRS website at www.irs.gov/businesses/small and click on the "Employer ID Numbers (EINs)" link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS.

P.O. Box

If the Post Office does not deliver mail to your street address and you have a P.O. box, show the box number instead of the street address.

Signature

Form 637 must be signed by a person with authority to bind the applicant.

Where To Apply

Send Form 637 to:

Department of the Treasury
Internal Revenue Service
Excise Operations Unit- Form 637
Cincinnati, OH 45999

Changes in Registration

If an IRS office has issued you a Certificate of Registry or a Letter of Registration that is still in effect for an activity, you do not have to reapply for registration for that activity unless notified to do so. However, see *Reregistration for Fuel Activities* below. *To confirm the status of a registration, visit www.irs.gov/app/exciseTax/*. To apply for another activity or to cancel a registration, you must contact the IRS office in which you are registered.

Notify the IRS office within 10 days if any information submitted with an application changes. This includes, but is not limited to, address changes or changes in business activities. A registrant may not sell, lease, or otherwise allow another person to use its registration.

Reregistration for fuel activities. You must reregister with the IRS if there is a change of more than 50% of the ownership of a registrant and you are registered for activity letters **K**, **M**, **S**, **Y**, **AB**, **AF**, **SB**, or **NB**. In this instance, a change in ownership means that after a transaction (or series of transactions), more than 50% change of the ownership interests in, or assets of, a registrant are held by persons other than persons who held more than 50% of such interests or assets before the transaction (or series of transactions). Reregistration does not apply to companies whose stock is regularly traded on an established securities market. If you fail to reregister as required, see *Penalty* above.

To reregister, send a newly completed Form 637 to the address under *Where To Apply* above. On line 1d, enter your current registration number. The IRS will revoke the current registration number and issue a new registration to the new ownership (registrant).

Additional Registration Information

For registration relating to:

- Taxable fuel, see Regulations section 48.4101-1.
- Exports of ozone-depleting chemicals, see Regulations section 52.4682-5.
- All other articles, see Regulations section 48.4222(a)-1.

The following notices provide additional guidance.

- Notice 2005-4 (Public Law 108-357 fuel taxes). You can find Notice 2005-4 on page 289 of Internal Revenue Bulletin (IRB) 2005-2 at www.irs.gov/pub/irs-irbs/irb05-02.pdf. It's modified by Notices 2005-24, 2005-62, and 2005-80.
- Notice 2005-24 (modifies Notice 2005-4); on page 757 of IRB 2005-12 at www.irs.gov/pub/irs-irbs/irb05-12.pdf.
- Notice 2005-62 (modifies Notice 2005-4); Biodiesel and Aviation-Grade Kerosene; on page 443 of IRB 2005-35 at www.irs.gov/pub/irs-irbs/irb05-35.pdf.
- Notice 2005-80 (modifies Notice 2005-4); on page 953 of IRB 2005-46 at www.irs.gov/pub/irs-irbs/irb05-46.pdf.
- Notice 2008-92 (alt. fuel credit/tax; blood collectors); on page 774 of IRB 2008-43 at www.irs.gov/pub/irs-irbs/irb08-43.pdf.
- Notice 2008-110 (biodiesel; cellulosic biofuel) on page 1298 of IRB 2008-51 at www.irs.gov/irb/2008-51_IRB/index.html.
- Treasury Decision (T.D.) 9804 and Notice 2012-77 (medical device tax) on pages 730 and 781, respectively, of I.R.B. 2012-52 at www.irs.gov/irb/2012-52_IRB/ar10.html.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on Form 837 to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Subtitle D of the Internal Revenue Code, Miscellaneous Excise Taxes, imposes certain excise taxes. Section 4101 requires certain persons to register for excise taxes on fuel, as imposed by sections 4041 and 4081. Sections 4101, 4222, and 4682 allow certain other manufacturers, sellers, or purchasers to register to be eligible for credits or to be exempt from the excise tax on taxable articles. If you are required to register under section 4101 or if you elect to register for credits and/or exemption, you are required to provide the information requested on this form. Failure to provide this information may subject persons required to register to penalties, and may delay or prevent the processing of a voluntary registration for credits or exemption; providing false information may subject you to penalties. Section 6109 requires you to provide the requested identification numbers.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give such information to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions to administer their tax laws; and to other countries under a tax treaty. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 837 will vary depending on individual circumstances. The estimated average time is Recordkeeping, 7 hr., 39 min.; Learning about the law or the form, 1 hr., 37 min.; Preparing and sending the form to the IRS, 4 hr., 13 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 837 simpler, we would be happy to hear from you. You can send your comments to:

Internal Revenue Service
Tax Forms and Publications Division
SE:W:CAR:MP:TFP
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send Form 837 to this address. Instead, see *Where To Apply*, earlier.

**Schedule 8
(Form 8849)**(October 2006)
Department of the Treasury
Internal Revenue Service**Registered Credit Card Issuers**

OMB No. 1545-1420

► Attach to Form 8849. Do not file with any other schedule.

Name as shown on Form 8849	EIN	Total refund (see instructions)
		\$

Period of claim: Enter month, day, and year
In MMDDYYYY format.

From ►

To ►

Claimant's registration no. ► C C _____

You must enter your registration number to make a
claim on Schedule 8.

Note. For lines 1 through 5, claimant (a) has not collected the amount of tax from the ultimate purchaser or has obtained the written consent of the ultimate purchaser to make the claim, (b) has repaid or agreed to repay the amount of tax to the ultimate vendor, has obtained the written consent of the ultimate vendor to make the claim, or has made arrangements that directly or indirectly provide the ultimate vendor with repayment of the tax, and (c) has obtained the required certificate from the ultimate purchaser and has no reason to believe any of the information in the certificate is false.

1 Sales of Undyed Diesel Fuel

	(a) Rate	(b) Gallons	(c) Amount of refund Multiply col. (a) by col. (b)	(d) CRN
Use by a state or local government	\$.243		\$	360

2 Sales of Undyed Kerosene (Other Than Kerosene For Use in Aviation)

	(a) Rate	(b) Gallons	(c) Amount of refund Multiply col. (a) by col. (b)	(d) CRN
Use by a state or local government	\$.243		\$	346

3 Sales of Kerosene for Use in Aviation

	(a) Rate	(b) Gallons	(c) Amount of refund Multiply col. (a) by col. (b)	(d) CRN
a Use by a state or local government (kerosene taxed at \$.244)	\$.243		\$	346
b Use by a state or local government (kerosene taxed at \$.219)	.218			369

4 Sales of Gasoline

	(a) Rate	(b) Gallons	(c) Amount of refund Multiply col. (a) by col. (b)	(d) CRN
a Use by a nonprofit educational organization	\$.183		\$	362
b Use by a state or local government	.183			

5 Sales of Aviation Gasoline

	(a) Rate	(b) Gallons	(c) Amount of refund Multiply col. (a) by col. (b)	(d) CRN
a Use by a nonprofit educational organization	\$.193		\$	324
b Use by a state or local government	.193			

For Privacy Act and Paperwork Reduction Act Notice, see Form 8849 Instructions.

Cat. No. 47991M

Schedule 8 (Form 8849) (10-2006)

**Defendant
Exhibit**

Instructions

Purpose of Schedule

New Schedule 8, Registered Credit Card Issuers, is used by registered credit card issuers to make a claim for refund or payment of tax paid on certain sales of taxable fuel (diesel fuel, kerosene, and gasoline) to state and local governments and certain sales of gasoline to nonprofit educational organizations. The taxable fuel must have been purchased with a credit card issued to the state or local government or nonprofit educational organization by the credit card issuer making the claim. These rules apply to taxable fuel sold after December 31, 2005.

Claims may be made for the fuels and uses as listed on lines 1 through 5. To make a claim, the credit card issuer must:

1. Be registered by the IRS, and
2. Meet the conditions described in the note above line 1.

If 1 and 2 above are not met, or if the taxable fuel is purchased without the use of a credit card issued by the credit card issuer to a state or local government or nonprofit educational organization, the credit card issuer cannot make the claim.

Registration Number

You must enter your registration number. You are registered if you received a letter of registration with a registration number from the IRS that has not been revoked or suspended. If you do not have a registration number, you cannot make this claim. Use Form 637, Application for Registration (For Certain Excise Tax Activities), to apply for one.

Required Certificate

See Model Certificate R in Pub. 510, Excise Taxes for 2006.

How To File

Attach Schedule 8 to Form 8849. On the envelope write "Registered Credit Card Issuer Claim" and mail to the IRS at the address under *Where To File* in the Form 8849 instructions.

Lines 1 Through 5

Claim requirements. The following requirements must be met.

1. The claim must be for taxable fuel sold during a period that is at least 1 week.
2. The amount of the claim must be at least \$200. To meet this minimum, amounts from lines 1 through 5 may be combined.
3. The claim must be filed by the last day of the first quarter following the earliest quarter of the claimant's income tax year included in the claim. For example, a calendar-year claimant's claim for diesel fuel sold during September and October must be filed by December 31.

Note. If the requirements above are not met for lines 1 through 3, see *Annual Claims* in the Form 8849 instructions.

Total Refund

Add all amounts in column (c) and enter the result in the total refund box at the top of the schedule.

#	Govt Unit	Beginning Date	Ending Date	Date Signed	Period Covered (yrs)	Fuel Type
1	Alpha Fire Dept.	4/1/2008	4/1/2011	7/27/2010		3 N/A
2	Bald Eagle Fire Co.	4/1/2008	4/1/2011	8/16/2010		3 N/A
3	Bald Eagle Fire Co.	4/1/2010	4/1/2014	3/14/2011		4 N/A
4	Bellefonte Area School Dist.	4/1/2008	4/1/2011	8/22/2011		3 N/A
5	Bellefonte Boro	5/29/2010	5/29/2013	8/6/2010		3 N/A
6	Benner Township	4/1/2008	4/1/2011	7/26/2010		3 N/A
7	Boggs Township	5/29/2007	5/29/2010	7/26/2010		3 N/A
8	Boggs Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
9	Boggs Township (Clfd Cnty)	4/1/2008	4/1/2011	7/27/2010		3 N/A
10	Bradford Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
11	Central PA Institute of Science	4/1/2008	4/1/2011	7/26/2010		3 N/A
12	Centre Area Transport Authority	5/29/2010	5/29/2013	8/6/2010		3 N/A
13	Centre County Library	5/29/2010	5/29/2013	8/2/2010		3 N/A
14	Centre Hall Boro	5/29/2010	5/29/2013	8/10/2010		3 N/A
15	Centre Hall Fire	9/27/2010	9/26/2013	9/27/2010		3 N/A
16	Central Hall Potter Sewer Authority	9/30/2006	9/30/2009	5/29/2007		3 N/A
17	Central Hall Potter Sewer Authority	5/29/2010	5/29/2013	7/27/2010		3 N/A
18	Chester Hill Boro	7/10/2007	7/9/2010	7/10/2007		3 N/A
19	Chester Hill Boro	5/29/2010	5/29/2013	7/26/2010		3 N/A
20	Chester Hill Fire Co.	4/1/2008	4/1/2011	7/13/2011		3 N/A
21	Chester Hill Fire Co.	4/1/2011	4/1/2013	7/13/2011		2 N/A
22	Citizens Hook & Ladder	4/1/2005	4/1/2008	7/27/2010		3 N/A
23	Citizens Hook & Ladder	4/1/2008	4/1/2011	7/27/2010		3 N/A
24	Citizens Hook & Ladder	4/1/2010	4/1/2014	3/9/2011		4 N/A
25	Clarion County Office of Emergency	5/29/2010	5/29/2013	7/28/2010		3 N/A
26	Clearfield Boro	4/1/2008	4/1/2011	7/30/2010		3 N/A
27	Clearfield Boro	4/1/2011	4/1/2014	7/12/2011		3 N/A
28	Clearfield Co. Career Center	7/20/2010	7/20/2013	7/20/2010		3 N/A
29	Clearfield Co. Career & Tech CN	4/1/2011	4/1/2014	7/11/2011		3 N/A
30	Clearfield Recreation & Tourism	4/1/2008	4/1/2011	8/13/2010		3 N/A
31	Clinton Co. Solid Waste Authority	5/29/2010	5/29/2013	8/10/2010		3 N/A
32	Columbia Fire Co. #1	1/1/2009	12/31/2009	7/7/2009		1 N/A
33	Columbia Fire Co.	4/1/2010	4/1/2014	3/10/2011		4 N/A
34	Cooper Township Road Dst.	5/29/2010	5/29/2013	7/26/2010		3 N/A

Defendant Exhibit

#	Govt Unit	Beginning Date	Ending Date	Date Signed	Period Covered (yrs)	Fuel Type
35	Covington/Karthaus Area Authority	5/29/2010	5/29/2013	7/27/2010		3 N/A
36	Covington Township	5/29/2010	5/29/2013	8/2/2010		3 N/A
37	Curwensville Lake Authority	4/1/2008	4/1/2011	7/27/2010		3 N/A
38	Decatur Township	5/29/2010	5/29/2013	8/10/2010		3 N/A
39	Ferguson Township	4/1/2008	4/1/2011	7/28/2010		3 N/A
40	Gregg Twp Fire Co.	4/10/2006	4/10/2009	5/29/2007		3 N/A
41	Gregg Twp Fire Co.	5/29/2010	5/29/2013	7/27/2010		3 N/A
42	Halfmoon Township	1/1/2010	12/31/2013	12/11/2009		4 N/A
43	Halfmoon Township	5/29/2010	5/29/2013	7/29/2010		3 N/A
44	Hawthorn Fire Co.	4/1/2008	4/1/2011	8/19/2010		3 N/A
45	Hawthorn Fire Co.	1/1/2009	12/31/2009	6/19/2009		1 N/A
46	Hope Fire Company No. 2	4/1/2008	4/1/2011	8/16/2010		3 N/A
47	Howard Fire Company	5/29/2010	5/29/2013	8/24/2010		3 N/A
48	Howard Township	5/29/2010	5/29/2013			3 N/A
49	Karthaus Township	5/29/2010	5/29/2013	8/9/2010		3 N/A
50	Lawrence Township	11/1/2006	11/1/2009	5/29/2007		3 N/A
51	Lawrence Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
52	Logan Fire Co.	4/1/2008	4/1/2011	7/27/2010		3 N/A
53	Marion Township	5/29/2010	5/29/2013	7/27/2010		3 N/A
54	Milesburg Borough	5/29/2010	5/29/2013	7/24/2010		3 N/A
55	Morris Cooper Police Dept.	5/29/2010	5/29/2013	7/27/2010		3 N/A
56	Morris Twp Road Dist.	5/29/2010	5/29/2013	8/5/2010		3 N/A
57	Mountain Top Fire Co.	5/29/2010	5/29/2013	7/20/2010		3 N/A
58	Osceola Mills Borough	5/29/2010	5/29/2013	8/5/2010		3 N/A
59	Patton Township	4/1/2008	4/1/2011	7/30/2010		3 N/A
60	PA State Correction	4/1/2008	4/1/2011	7/28/2010		3 N/A
61	Penndot Maintenance District 2	4/1/2008	4/1/2011	7/30/2010		3 N/A
62	Philipsburg Boro	4/1/2005	4/1/2008	5/31/2007		3 N/A
63	Philipsburg Boro	5/29/2010	5/29/2013	7/26/2010		3 N/A
64	P.O. Area School Dist.	4/11/2006	4/11/2009	6/1/2007		3 N/A
65	P.O. Area School Dist.	5/29/2010	5/29/2013	7/28/2010		3 N/A
66	Pleasant Gap Fire Co.	8/1/2006	8/1/2009	5/30/2007		3 N/A
67	Pleasant Gap Fire Co.	5/29/2010	5/29/2013	7/27/2010		3 N/A
68	Port Matilda Borough	2/1/2007	2/1/2010	6/6/2007		3 N/A
69	Port Matilda Borough	5/29/2010	5/29/2013	7/27/2010		3 N/A
70	Port Matilda Fire Co.	5/29/2007	5/29/2010			3 N/A
71	Port Matilda Fire Co.	5/29/2010	5/29/2013			3 N/A
72	Red Bank Township Clarion Cnty	6/19/2006	6/19/2009	6/1/2007		3 N/A
73	Red Bank Township Clarion Cnty	5/29/2010	5/29/2013	8/2/2010		3 N/A
74	Red Bank Valley School Dist.	3/21/2006	3/21/2009	3/21/2006		3 N/A

#	Govt Unit	Beginning Date	Ending Date	Date Signed	Period Covered (yrs)	Fuel Type
75	Red Bank Valley School Dist.	5/29/2007	5/29/2010	7/29/2010		3 N/A
76	Red Bank Valley School Dist.	5/29/2010	5/29/2013	7/29/2010		3 N/A
77	Reliance Fire Co.	4/1/2008	4/1/2011	7/22/2011		3 N/A
78	Rush Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
79	Seven Mountains EMS	5/29/2010	5/29/2013	7/26/2010		3 N/A
80	Snow Shoe Borough	4/1/2008	4/1/2011	8/10/2010		3 N/A
81	Snyder Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
82	Spring-Benner Walker Joint Authority	5/29/2010	5/29/2013	7/27/2010		3 N/A
83	Spring-Benner Walker Joint Authority	5/29/2010	5/29/2013	7/27/2010		3 N/A
84	Spring Township	5/29/2010	5/29/2013	7/26/2010		3 N/A
85	State College Area School Dist.	4/1/2008	4/1/2011	8/5/2010		3 N/A
86	State College Boro	5/29/2010	5/29/2013	7/27/2010		3 N/A
87	Stone Creek Valley Fire Co.	1/1/2009	12/31/2009	6/18/2009		1 N/A
88	Tyrone Area School Dist.	5/29/2010	5/29/2013	7/26/2010		3 N/A
89	Undine Fire Company #2	4/1/2008	4/1/2011	7/14/2011		3 N/A
90	Union Township	4/1/2008	4/1/2011	7/25/2011		3 N/A
91	Walker Township Vol. Fire Dept.	4/1/2008	4/1/2011	9/2/2010		3 N/A
92	Wallaceton-Boggs Municipal Authority	4/1/2008	4/1/2011	7/24/2010		3 N/A
93	Warriors Mark Water Auth.	4/1/2008	4/1/2011	8/1/2010		3 N/A
94	Williamsport Municipal Airport	5/29/2010	5/29/2013	7/26/2010		3 N/A
95	Central PA Dist. Library	5/29/2010	5/29/2013			3 N/A